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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 124.

SOPHIA BIGELOW, ADMINISTRATRIX, AND HENRY P. BIGELOW, ADMINISTRATOR, OF HENRY W. BIGELOW, DECEASED, PLAINTIFFS IN ERROR,

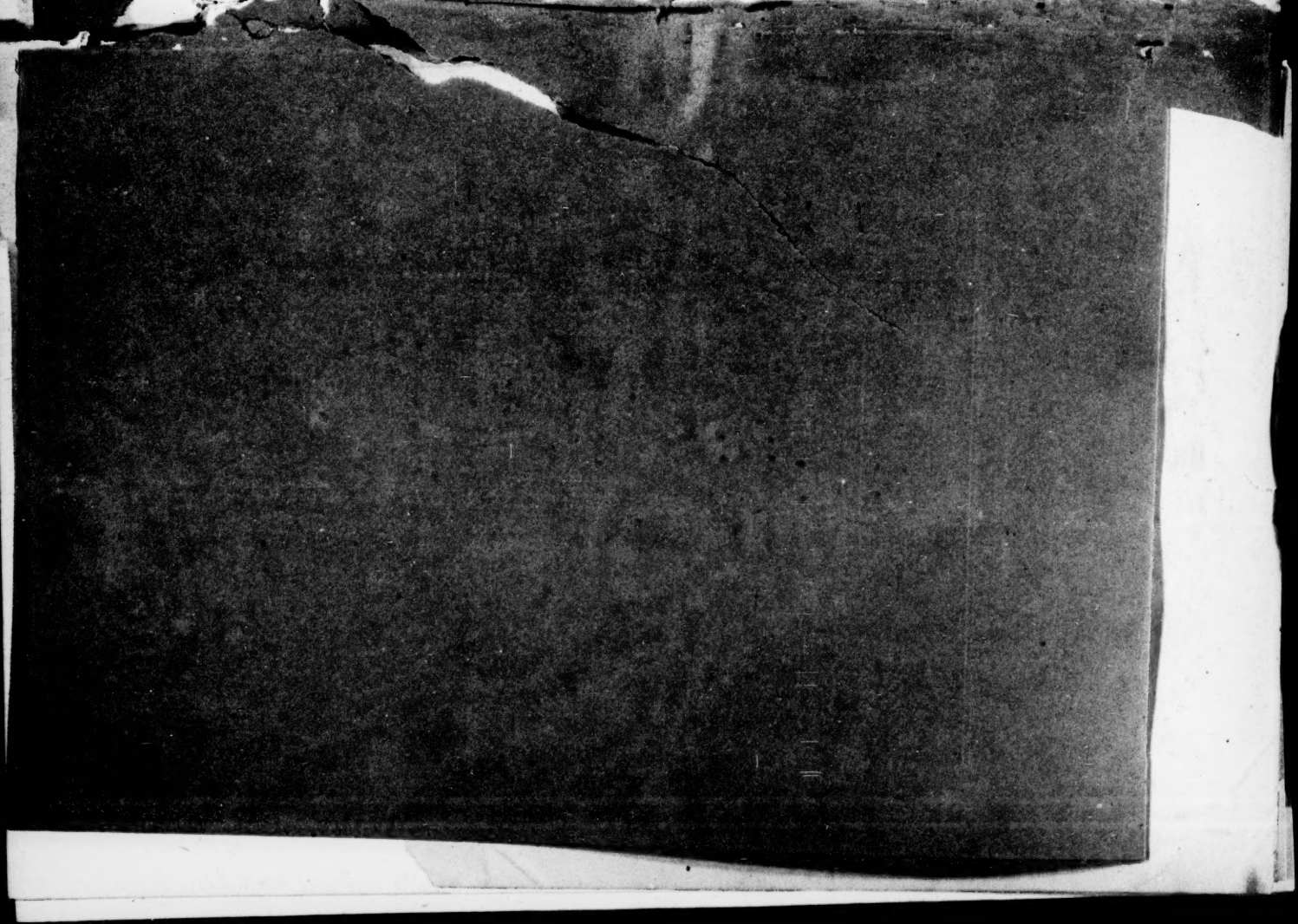
vs.

THE BERKSHIRE LIFE-INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 12, 1874.

Dec 2 1876
Affirmed
Jud. Davis



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2 Pleas in the circuit court of the United States for the northern district of Illinois, began and held at the city of Chicago, in said district, on Monday, the sixth day of July, in the year of our Lord one thousand eight hundred and seventy-four, before the Hon. Henry W. Blodgett, district judge, sitting in absence pro tempore of the Hon. Thomas Drummond, circuit judge, and on Thursday, the sixth day of August one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

WM. H. BRADLEY, *Clerk.*

SOPHIA BIGELOW, ADMINISTRATRIX, & HENRY P. Bigelow, administrator, of Henry W. Bigelow, deceased, } Assumpsit.
v.
THE BERKSHIRE LIFE-INSURANCE COMPANY.

3 Be it remembered that on the 13th day of December, one thousand eight hundred and seventy-three, said defendant, by Mattocks & Mason & Miller and Frost, their attorneys, come and file a transcript of certain proceedings had in said cause in the circuit court of Cook County, and State of Illinois; which read in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of Illinois, Cook County, ss:

Pleas before the honorable the judges of the circuit court of Cook County, at a term thereof began and held in the city of Chicago, in said County and State, on the third Monday, being the twentieth day, of October, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

Present, the honorable W. W. Farwell, chief-justice of the circuit court of Cook County, State of Illinois; E. S. Williams, Henry
4 Booth, John G. Rogers, Lambert Tree, judges; Charles H. Reed, State's attorney; Timothy M. Bradley, sheriff.

Attest:

JACOB GROSS, *Clerk.*

Be it remembered that heretofore, to wit, on the 20th day of October, 1873, there was filed in said court, in a certain cause therein pending, wherein Sophia Bigelow et al. was plaintiffs and the Berkshire Life-Insurance Company was defendant, a certain petition and bond in words and figures following, to wit:

Circuit court of Cook County, October term, 1873.

STATE OF ILLINOIS,
Cook County, ss:

SOPHIA BIGELOW, ADMINISTRATRIX, AND Henry Bigelow, administrator, of the estate of Henry W. Bigelow, deceased, } Assumpsit.
v.
THE BERKSHIRE LIFE-INSURANCE COMPANY.

5 To the honorable the judges of the circuit court of Cook County, in the State of Illinois:

The petition of the Berkshire Life-Insurance Company, of Pittsfield, in the State of Massachusetts, respectfully shows that your petitioner is the defendant in this suit, and that the same was brought

by the said Sophia Bigelow and Henry Bigelow, plaintiffs, on or about the eighth day of September, A. D. 1873, in the circuit court of Cook County, to be held in the county of Cook: and that the said plaintiffs are and were at the time of bringing this suit citizens of the State of Illinois; and that your petitioner is, and was at the time of bringing this suit, a citizen of the State of Massachusetts.

And your petitioner further respectfully shows that the said plaintiffs claim, in the summons and declaration in this suit, as damages against your petitioner, the sum of twenty-five thousand dollars; and that the matter in dispute in this suit therefore exceeds the sum of five hundred dollars, exclusive of costs.

And your petitioner further respectfully represents that this suit is brought by the said plaintiffs against the said defendant, demand-
6 ing the sum of $25,000 aforesaid as damages, alleged to be sustained by the plaintiffs as administrators of the estate of Henry W. Bigelow, deceased, by reason of the alleged non-payment, by the defendant, of two certain policies of insurance upon the life of the said Henry W. Bigelow, deceased, alleged to have been executed by the defendant herein before the death of said deceased; that said suit is one in which there can be a final determination of the controversy, so far as it concerns your petitioner, without the presence of other defendants as parties in this cause.

And your petitioner further respectfully represents that this suit has not yet been tried, but that the same is pending for trial in said circuit court of Cook County, Illinois; and that your petitioner desires to remove this suit, before the trial thereof, into the next term circuit court of the United States to be held in the northern district of Illinois, in pursuance of the provision of law as contained in the act of Congress, approved July twenty-seven, one thousand eight hundred
7 and sixty-six, entitled "An act for the removal of causes in certain cases from State courts;" and that it is ready and willing to give such good and sufficient security as this court may direct for its doing all acts and things required to be done by the said provisions of law upon the removal of a suit into the United States courts, and it offers herewith its bond, executed, G. S. Hubbard, jr., and John Mattocks, of the city of Chicago, Cook County, Illinois, as surety, in the penal sum of two hundred and fifty dollars, conditioned that your petitioner shall enter in the next circuit court of the United States to be held in the northern district of Illinois, on the first day of its session, copies of all process, pleadings, depositions, testimony, and other proceedings in this suit, and doing such other appropriate acts as by the said act of Congress approved July twenty-seven, eighteen hundred and sixty-six, are required to be done upon the removal of a suit into the United States court, as good and sufficient surety, according to the said provision of law upon the removal of a suit into the United States courts.

8 And your petitioner therefor' prays that the said bond may be accepted as good and sufficient surety, according to said provision of law, and that the said suit may be removed into the next circuit court of the United States to be held in the northern district of Illinois, pursuant to the statute of the United States in such case made and provided, and that no further proceedings may be had therein in this court; and your petitioner will ever pray.

The Berkshire Life-Insurance Company, of Pittsfield, Mass.

By G. S. HUBBARD, JR., *General Agent.*

MATTOCKS & MASON,
Attorneys for Petitioner.

STATE OF ILLINOIS,
Cook County, ss:

G. S. Hubbard, jr., the agent for the petitioner in the foregoing petition, being duly sworn, deposes and says that he is duly-authorized agent in and for the city of Chicago of the petitioner in the above petition; that he has read the above petition subscribed by him, and
9 knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief; as to those matters he believes it to be true; and further saith not.

G. S. HUBBARD, JR.

Subscribed and sworn to before me this 18th day of October, A. D. 1873.

[SEAL.] CHARLES A. VAIL,
Notary Public.

STATE OF ILLINOIS,
Cook County, ss:

Circuit court of Cook County, October term, 1873.

SOPHIA BIGELOW, ADMINISTRATRIX, AND HENRY Bigelow, administrator, of the estate of Henry W. Bigelow, deceased, *v.* THE BERKSHIRE LIFE-INSURANCE COMPANY. } Assumpsit.

We the Berkshire Life-Insurance Company, of Pittsfield, in the State of Massachusetts, as principal, and John Mattocks and G. S. Hubbard, jr., of Chicago, Illinois, as surety, are held and firmly bound unto
10 Sophia Bigelow, administratix, and Henry Bigelow, administrator of the estate of Henry W. Bigelow, deceased, of Chicago, Cook County, Illinois, in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Sophia Bigelow and Henry Bigelow, administrators as aforesaid, their successors or assigns; for which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated the day of October, A. D. 1873.

Whereas a suit was brought on or about the eighth day of September, one thousand eight hundred and seventy-three, in the circuit court of Cook County, by the said Sophia Bigelow and Henry Bigelow, administrators as aforesaid, against the said Berkshire Life-Insurance Company, and the same is now pending for trial in said court, and is removable into the circuit court of the United States for the northern district of Illinois under the act of Congress approved July twenty-seven,
11 eighteen hundred and sixty-six, entitled "An act for the removal of causes in certain cases from State courts;" and whereas the said Berkshire Life-Insurance Company has filed its petition in said circuit court of Cook County for the removal of said suit into the next circuit court of the United States to be held in the northern district of Illinois:

Now, therefore, the condition of the above obligation is such that if the above-bounden Berkshire Life-Insurance Company or its legal representatives shall enter, or cause to be entered, in the circuit court of the United States for the northern district of Illinois, on the

first day of its stated session next ensuing after the order of the said circuit court of Cook County, for the removal of said suit into said circuit court, copies of all process, pleading, depositions, testimony, and other proceedings in said suit, and do, or cause to be done, such other appropriate acts as by the said act of Congress approved July twenty-seven, eighteen hundred and sixty-six, are required to be
12 done upon the removal of a suit into the United States court, then the above obligation to be void; otherwise to remain in full force and virtue.

G. S. HUBBARD. [SEAL.]
JOHN MATTOCKS. [SEAL.]

And thereupon afterwards, to wit, on the 21st day of October, A. D. 1873, a certain order was made and entered of record in said cause, to wit:

Order, Oct. 21, 1873.

SOPHIA BIGELOW, ADMINISTRATRIX AND HENRY P. Bigelow, administrator, of the estate of Henry W. Bigelow, deceased, *v.* BERKSHIRE LIFE-INSURANCE COMPANY. } Assumpsit.

This day came said defendant by its attorneys, and filed its petition for the transferring of said cause into the United States circuit court for the northern district of Illinois; and said defendant offering as surety a bond in the penal sum of two hundred and fifty dollars, with G. S. Hubbard, jr., and John Mattocks, as surety, conditioned, accord-
13 ing to law, that said defendant will enter said circuit court of the United States on the first day of its next session copies of the process issued in said cause; and the court, being fully satisfied with the surety offered, doth order that said cause be, and it is hereby, transferred to said United States circuit court for the northern district of Illinois, according to the act of Congress in such case made and provided.

STATE OF ILLINOIS,
County of Cook, ss.

I, Jacob Gross, clerk of the circuit court of Cook County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain petition and bond filed Oct. 20th, 1873, and a certain order entered of record Oct. 21st, 1873, in a certain cause lately pending in said court, on the law-side thereof, between Sophia Bigelow et al., plaintiffs, and the Berkshire Life-Insurance Company, defendant.

In witness whereof I have hereunto set my hand and affixed the
14 seal of said court at Chicago, in said county, this twenty-third day of October, 1873.

[L. S.] JACOB GROSS, *Clerk.*

(Endorsed:) Filed Dec. 13, 1873. W. H. Bradley, clk.

And the said defendant by its attorneys also filed the declaration of the said plaintiffs filed in said cause in said circuit court of Cook County aforesaid; which reads in the words and figures following, to wit:

15 *Plaintiffs' declaration.*

In the circuit court of Cook County, September term, A. D. 1873

STATE OF ILLINOIS,
Cook County, ss:

Sophia Bigelow, administratrix, and Henry P. Bigelow, administrator of the estate of Henry W. Bigelow, deceased, plaintiffs in this suit, by Hoyne, Horton & Hoyne, their attorneys, complain of the Berkshire Life-Insurance Company, a corporation existing under and by virtue of the laws of the State of Massachusetts, in a plea of trespass on the case upon promises:

For that whereas heretofore, and in the life-time of the said Henry W. Bigelow, deceased, to wit, on the twenty-second day of August, in the year of our Lord one thousand eight hundred and seventy-two, (A. D. 1872,) to wit, at Chicago, in said county, on the application of the said Henry W. Bigelow, said defendant did make its certain policy of insurance in writing, whereby the said defendant, in consideration of the representations made in application No. 11462,

16 on which said policy was issued, and of seven hundred and sixty-five dollars, ($765,) to be paid by the said Henry W. Bigelow on or before the fourteenth day of August, at noon, in every year during the continuance of said policy, or its exquivalent, in quarter, thrice, or half yearly payments in advance, did assure the life of the said Henry W. Bigelow, deceased, of Chicago, in said county, in the amount of ten thousand dollars ($10,000) for the term of life, payable to the executors, administrators, or assigns of said Henry W. Bigelow, deceased; and that the said defendant, in consideration aforesaid, did, in and by said policy, promise and agree well and truly to pay, or cause to be paid, at their office, the said sum insured, to the said Henry W. Bigelow, deceased, his guardians, executors, administrators, or assigns, whenever the same should become due, namely, within three months after due notice and satisfactory proof of the death of the said Henry W. Bigelow during the continuance and before the termination of said policy, deducting therefrom the balance of the year's premium for any and all premiums for which credit might have been given and interest or other obligations remaining unpaid at that time, and also to divide equitably among holders of policies which had not terminated except by death the surplus of premiums, agreeably to the provision of the charter of said company: Provided always, and it was therein and thereby declared to be the true intent and meaning of said policy, and that the same was accepted upon the express terms and conditions in said policy mentioned, as follows:

17 "That the person whose life is hereby insured shall have liberty to reside within any of the settled parts of the United States and Territories, or the Dominion of Canada, between the twenty-fifth and forty-eighth degrees of north latitude, and in California, and to travel on any of the ordinary routes, by land or water, within the same; and to go as a passenger on any of the usual routes, by the usual modes of conveyance, along the Atlantic coast of the United States, New Brunswick, and Nova Scotia, south of the St. Lawrence River, with liberty to touch at any intermediate ports and adjacent islands, and to occasionally make excursions, by boat or vessel, on the sea-coast or on any river, lake, or pond, for health, recreation, or sporting; and to go as a passenger on any first-class vessel between the Atlantic ports of the United States and Europe, and to travel and reside in such parts of Europe as are in a state of peace:

"Provided, that in case the said assured party shall, without the consent of the company previously given in writing, enter upon a voyage or passage upon the seas except as permitted herein, or go to remain over one month in any part of the year beyond the limits hereinbefore named for travel and residence, or go south of the latitude of the southern boundary-line of the State of Virginia and Kentucky between the first day of July and the first day of November, or shall enter into any military or naval service whatsoever, (the militia not in ac-
18 tive service excepted,) or shall be personally employed on a rail-road-train or steamboat, or in ocean or inland navigation, (and such consent, if applied for, shall be granted for a fair additional premium,) or shall be personally employed in mining, or in the manufacture or transportation of gunpowder or other dangerously explosive material, or shall become so far intemperate as to impair his or her health or induce delirium tremens, or shall die in consequence of any injury received when in a state of intoxication, or by suicide, (sane or insane,) or in consequence of a duel, or by the hands of justice, or in the violation of or attempt to violate the laws of the United States, or of any State, county, or place, or if the representations made in the application which forms a part of this contract, and upon the faith of which this agreement is made, shall be found in any respect untrue, then, and in every such case, this policy shall be null and void; but in case of suicide, the surrender value of the policy at that time will be paid to the party in interest.

"Also in case the said party shall not pay the said annual premium, on or before the several days above mentioned for the payment thereof, or shall fail to pay when due any notes or other obligations given for premium, or shall otherwise fail to comply with all or any of the terms of this contract, then, and in every such case, the company shall not be liable to the payment of any sum on account of this policy; and
19 it shall cease and terminate, except that in case of the non-payment of the stipulated annual premium, after the payment of one full year's premium, if other condition of the policy shall have been violated, the party assured shall be entitled to a paid-up policy of like tenor and conditions, for as many tenths of the sum herein insured as he has paid annual premiums, provided notice shall be given to the company, and this policy surrendered, within thirty days of such first non-payment of premiums, otherwise this policy will continue in force, in accordance with 'An act to regulate the forfeiture of policies of life-insurance,' enacted by legislature of Massachusetts in April, A. D. 1861.

"Also, that if at any time premiums are received after due, on being informed that the health of the party whose life is hereby insured is good, it is not considered as forming any precedent in regard to future payments of premiums on said policy, and is in no case to be considered a waiver of the termination of the policy according to the conditions expressed therein, if any future payment of the premiums be omitted on the day it is full due.

"Also no assignment or transfer of this policy shall be valid without the written consent of the company; and in case of death the claim of any assignee shall be subject to proof of interest."

20 In witness whereof said defendant, the Berkshire Life Insurance Company, did, by their president, Thomas F. Plunkett, and their assistant secretary, Jas. W. Hull, sign and deliver the said contract at Pittsfield, in the State of Massachusetts; but it was further provided in and by said policy that the same should not be binding unti

countersigned and delivered by G. S. Hubbard, jr., agent, nor until the advanced premium should be paid as by the receipt accompanying the same, nor unless the said party insured should be alive and in sound health at the date of such payment; and the plaintiffs further aver that said policy was countersigned at Chicago, in said county, on the twenty-second day of August, A. D. 1872, by the said G. S. Hubbard, jr., as agent for said defendant, and by him delivered to said Henry W. Bigelow, deceased.

And the plaintiffs aver that the said sum of seven hundred and sixty-five dollars ($765) was paid by the said Henry W. Bigelow, deceased, on, to wit, the twenty-second day of August, A. D. 1872.

Plaintiffs further aver, on, to wit, the eighth day of February, in the year of our Lord one thousand eight hundred and seventy-three, (A. D. 1873,) the said Henry W. Bigelow di'd, at, to wit, Chicago, in said county, during the continuance and before the termination of said policy; and plaintiffs further aver that afterwards, on, to wit, the twenty-first day of February, one thousand eight hundred and seventy-three, (A. D.
21 1873,) due notice and satisfactory proof of the death of said Henry W. Bigelow was furnished to the said defendant, at, to wit, the county aforesaid; that at the time of his said death there was no balance of the year's premium or interest or other obligation remaining unpaid at that time, and due from the said Henry W. Bigelow to said defendant.

And the plaintiffs further aver that the said Henry W. Bigelow did, in his life-time, in all respects comply with the terms and conditions contained in the said policy, and in all things observe, perform, and fulfil all and singular the matters and things on his part to be observed, performed, and fulfilled, according to the form and effect of said policy.

Plaintiffs further aver that on, to wit, the day of , A. D. 1873, they were duly appointed administratrix and administrator of the estate of said Henry W. Bigelow, deceased, by the county court of said Cook County.

By means whereof said defendant became liable to pay to the plaintiffs the said sum of ten thousand dollars, ($10,000,) in said policy mentioned, yet the said defendant has not paid the plaintiff the said sum of money so insured as aforesaid; and, although often requested so to do, the said sum, and every part thereof, still remains wholly in arrear and unpaid, contrary to the form and effect of said policy of insurance so by the defendant in that behalf made as aforesaid, to the damage to the plaintiffs of twenty-five thousand, ($25,000;) and therefore they bring suit.

22 And for that whereas, also, said defendant heretofore, to wit, on the twenty-second day of August, A. D. 1872, at Chicago, to wit, in the county aforesaid, on the application of said Henry W. Bigelow, deceased, did make a certain other policy of insurance in writing, whereby the said defendant, in consideration of the representations made in application No. 11461, on which said policy was issued, and of one thousand and thirty-two dollars, ($1,032,) to be paid by the said Henry W. Bigelow on or before the fourteenth day of August, at noon, in every year during the continuance of said policy, or for ten (10) years, or its equivalent in quarter, thrice, or half yearly payments, in advance, (the last annual premium to be due and paid August fourteenth, A. D. 1881,) did assure the life of the said Henry W. Bigelow, deceased, of Chicago, in the county aforesaid, in the amount of ten thousand dollars ($10,000) for the term of life, payable to his executors, administrators, or assigns; and the said defendant did, in and by said policy, promise and agree well and

truly to pay, or cause to be paid, at their office, the said sum insured, to the said Henry W. Bigelow, deceased, his guardians, executors, administrators, or assigns, whenever the same should become due, namely, "within three months after due notice and satisfactory proof of the death of the said Henry W. Bigelow, during the continuance and before the termination of said policy, deducting therefrom the balance of the year's premium for any and all premiums for which credit
23 might have been given, and interest or other obligations remaining unpaid at that time, and also to divide equitably among holders of policies which had not terminated except by death the surplus of premiums, agreeably to the provision of the charter of said company."

Provided always, and it was therein and thereby declared to be the true intent and meaning of said policy, and that the same was accepted upon the express terms and conditions in said policy mentioned, as follows

"That the person whose life is hereby insured shall have liberty to reside within any of the settled parts of the United States and Territories or the Dominion of Canada, between the twenty-fifth and forty-eighth degree of north latitude, and in California, and to travel on any of the ordinary routes, by land or water, within the same, and to go as a passenger on any of the usual routes, by the usual modes of conveyance, along the Atlantic coast of the United States, New Brunswick, and Nova Scotia, south of the St. Lawrence River, with liberty to touch at any intermediate ports and adjacent islands, and to occasionally make excursions, by boat or vessel, on the sea-coast, or on any river, lake, or pond for health, recreation, or sporting, and to go as a passenger on any first-class vessel between the Atlantic ports of the United States and Europe, and to travel and reside in such parts of
24 Europe as are in a state of peace.

"Provided, that in case the said assured party shall, without the consent of the company previously given in writing, enter upon a voyage or passage upon the seas, except as permitted herein, or go to remain over one month in any part of the year beyond the limits herein before named for travel and residence, or go south of the latitude of the southern boundary-line of the States of Virginia and Kentucky between the first day of July and the first day of November, or shall enter any military or naval service whatever, (the militia not in active service excepted,) or shall be personally employed on a railroad-train or steamboat, or in ocean or inland navigation, (and such consent, if applied for, shall be granted for a fair additional premium,) *so* shall be personally employed in mining, or in the manufacture or transportation of gunpowder or other dangerously explosive material, or shall become so far intemperate as to impair his or her health or induce delirium tremens, or shall die in consequence of any injury received when in a state of intoxication, or by suicide, (sane or insane,) or in or in consequence of a duel, or by the hands of justice, or in the violation of, or attempt to violate the laws of the United States, or of any State, county, or place; or if the representations made in the application which forms a part of this contract, and upon the faith of which this agreement is made,
25 shall be found in any respect untrue, then, and in every such case, this policy shall be null and void; but in case of suicide, the surrender value of the policy at that time will be paid to the party in interest.

"Also, in case the said party shall not pay the said annual premium on or before the several days above mentioned for the payment thereof,

or shall fail to pay when due any notes or other obligations given for premium, or shall otherwise fail to comply with all or any of the terms of this contract, then, and in every such case, the company shall not be liable to the payment of any sum on account of this policy, and it shall cease and terminate, excepting that in case of the non-payment of the stipulated annual premium, after the payment of one full year's premium, if *one* other condition of the policy shall have been violated, the party assured shall be entitled to a paid-up policy of like tenor and conditions, for as many tenths of the sum herein insured as he has paid annual premiums, provided notice shall be given to the company, and this policy surrendered within thirty days of such first non-payment of premium; otherwise the policy will continue in force in accordance with 'An act to regulate the forfeiture of policies of life-insurance," enacted by the legislature of Massachusetts, in April, A. D. 1861.

"Also, that if at any time premiums are received after due, on
26 being informed that the health of the party whose life is hereby insured is good, it is not considered as forming any precedent in regard to future payments of premiums on said policy, and is in no case be considered a waiver of the termination of the policy according to the conditions expressed therein, if any future payment of the premiums is omitted on the day it is full due.

"Also *an* assignment or transfer of this policy shall be valid without the written consent of the company, and in case of death the claim of any assignee shall be subject to proof of interest."

In witness whereof, the defendant, said Berkshire Life-Insurance Company, did, by their president, Thos. F. Plunkett, and their assistant secretary, Jos. W. Hull, sign and deliver the said contract at Pittsfield, in the State of Massachusetts; but it was further provided in and by said policy that the same should not be binding until countersigned and delivered by G. S. Hubbard, jr., agent, nor until the advanced premiums should be paid, as by the receipt accompanying the same, nor unless the said party insured should be alive and in sound health at the date of such payment; and the plaintiffs further aver that said policy was countersigned at Chicago, in said county, on the twenty-second day of August, A. D. 1872, by the said G. S. Hubbard, jr., as agent for said defendant, and by him delivered to said Henry W. Bigelow, de-
27 ceased.

And the plaintiffs aver that the said sum of one thousand and thirty-two dollars ($1,032) was paid by the said Henry W. Bigelow, deceased, on, to wit, the twenty-second day of August, A. D. 1872. Plaintiffs further aver that, on, to wit, the eighth day of February, in the year of our Lord one thousand eight hundred and seventy-three, (A. D. 1873,) the said Henry W. Bigelow died, at, to wit, Chicago, in said county, during the continuance and before the termination of said policy; and plaintiffs further aver that afterwards, on, to wit, the twenty-first day of February, one thousand eight hundred and seventy-three, (A. D. 1873,) due notice and satisfactory proof of the death of said Henry W. Bigelow was furnished to the said defendant, at, to wit, the county aforesaid; that at the time of his said death there was *the* balance of the year's premium or interest or other obligation remaining unpaid at that time and due from the said Henry W. Bigelow to said defendant. And the plaintiffs further aver that the said Henry W. Bigelow did, in his lifetime, in all respects comply with the terms and conditions contained in the said policy, and in all things observe, perform, and fulfill all and singular the matters and things on his part to be observed, performed, and fulfilled, according to the form and effect of said policy.

Plaintiffs further aver that they were duly appointed admin-
28 istratrix and administrator of the estate of said Henry W. Big-
ler, deceased, by the county court of said Cook County, on, to wit, the day of , A. D. 1873.

By means whereof said defendants became liable to pay to the plaintiffs the said sum of ten thousand dollars, ($10,000,) in said policy mentioned; yet the said defendant has not paid the plaintiffs the said sum of money so insured as aforesaid, and, although often requested so to do, the said sum, and every part thereof, still remains wholly in arrear and unpaid, contrary to the form and effect of said policy of insurance so by the defendant in that behalf made as aforesaid, to the damage of the plaintiffs of twenty-five thousand dollars, ($25,000;) and therefore they bring suit.

And whereas also the said defendant afterward, to wit, on the twenty-second day of August, in the year of our Lord one thousand eight hundred and seventy-two, at the place aforesaid, was indebted to the said plaintiff in a large sum of money, to wit, twenty-five thousand dollars, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of the said defendant, and for other money by the said plaintiff, and at the like request of the said defendant, and for other money by the said de-
fendant before that time had and received to and for the use of
29 the said plaintiff, and also in a like sum for goods, wares, and merchandise before that time sold and delivered by said plaintiff to said defendant at like special instance and request, and also in the like sum, for the labor, care, and diligence of said plaintiff before that time done and performed by said plaintiff for said defendant, and at the like instance and request of said defendant; and, being so indebted, said defendant, in consideration thereof, then and there undertook and promised to pay said plaintiff said last-mentioned sum of money when thereunto afterward requested, and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas also the said defendant afterward, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted, together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being
30 in arrear and unpaid; and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of twenty-five thousand dollars, of like lawful money as aforesaid; and being so found in arrear and indebted to said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterward requested.

Yet the said defendant, not regarding its said promises and undertakings, but contriving, etc., although often requested so to do, has not paid said plaintiffs either of said sums of money, or any part thereof; but so to do has hitherto wholly neglected and refused, and still does

neglect and refuse, to the damage of said plaintiff of twenty-five thousand dollars; and therefore they bring suit, etc.

HOYNE, HORTON & HOYNE,
Attorneys for Plaintiff.

31 [No. 11461.—Term, life.—10 paym'ts.]

Berkshire Life-Insurance Company, incorported by the legislature of Massachusetts, 1841.

$1,032.00 premium.] [$10,000.00 amount.

[$1.00 U. S. revenue-stamp, over which is written "Aug. 22, '72, G. S. H."]

This policy of insurance witnesseth that the Berkshire Life-Insurance Company, in consideration of the representations made in application No. 11461, on which this policy is issued, and of ten hundred thirty-two dollars, to be paid by Henry W. Bigelow, on or before the 14th day of August, at noon, in every year during the continuance of this policy, for ten years or its equivalent in quarter, thrice, or half yearly payments in advance, (last annual premium to be due and paid August 14, 1881,) do assure the life of Henry W. Bigelow, of Chicago, Cook County, Illinois, in the amount of ten thousand dollars for the term of life, payable to his executors, administrators, or assigns.

And the said company do hereby promise and agree well and truly to pay, or cause to be paid, at their office, the said sum insured, to the above-named party, his guardians, executors, administrators, or assigns, whenever the same become due, viz, within three months after due notice and satisfactory proof of the death of the said Henry W. Bigelow, during the continuance and before the termination of this
32 policy, deducting therefrom the balance of the year's premium, if any, and all premiums for which credit may have been given, and interest, or other obligations remaining unpaid at that time; and also to divide equitably among the holders of policies which have not terminated except by death the surplus of premiums, agreeably to the provision of the charter of said company.

Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted upon these express terms and conditions:

That the said person whose life is hereby insured shall have liberty to reside within any of the settled parts of the United States and Territories, or the Dominion of Canada, between the twenty-fifth and forty-eighth degrees of north latitude, and in California, and to travel on any of the ordinary routes, by land or water, within the same; and to go as a passenger on any of the usual routes by the usual modes of conveyance, along the Atlantic coast of the United States, New Brunswick, and Nova Scotia, south of the St. Lawrence River, with liberty to touch at any intermediate ports and adjacent islands, and to occasionally make excursions by boat or vessel on the sea-coast, or on any river, lake, or pond, for health, recreation, or sporting, and to go as a passenger on any first-class vessel between the Atlantic ports of the
33 United States and Europe, and to travel and reside in such parts of Europe as are in a state of peace.

Provided that in case the said assured party shall, without the consent of the company previously given in writing, enter upon a voyage or passage upon the seas, except as permitted herein, or go to remain over one month in any part of the year beyond the limits hereinbefore named for travel and residence, or go south of the latitude of the southern

boundary-line of the States of Virginia and Kentucky between the first day of July and the first day of November, or shall enter into any military or naval service whatsoever, (the militia not in active service excepted,) or shall be personally employed on a railroad-train or steamboat, or in ocean or inland navigation, (and such consent, if applied for, shall be granted for a fair additional premium,) or shall be personally employed in mining or in the manufacture or transportation of gunpowder or other dangerously explosive material, or shall become so far intemperate as to impair his or her health or induce delirium tremens, or shall die in consequence of any injury received when in a state of intoxication, or by suicide, (sane or insane,) or in or in consequence of a duel, or by the hands of justice, or in the violation of or attempt to violate the laws of the United States, or of any State, county, or place, or if the representations made in the application which forms a part of this contract, and upon the faith of which this agreement is made, shall be found in any respect untrue, then, and in every such case, this policy shall be null and void; but in case of suicide, the surrender value of the policy at that time will be paid to the party in interest.

Also in case the said party shall not pay the said annual premium on or before the several days above mentioned for the payment thereof, or shall fail to pay when due any notes or other obligations given for premium, or shall otherwise fail to comply with all or any of the terms of this contract, then, and in any such case, the company shall not be liable to the payment of any sum on account of this policy, and it shall cease and terminate; excepting that in case of the non-payment of the stipulated annual premium, after the payment of one full year's premium, if no other condition of the policy shall have been violated, the party assured shall be entitled to a paid-up policy of like tenor and conditions for as many tenths of the sum herein insured as he has paid annual premiums; provided notice shall be given to the company, and this policy surrendered, within thirty days of such first non-payment of premium, otherwise the policy will continue in force, in accordance with "An act to regulate the forfeiture of policies of life-insurance," enacted by the legislature of Massachusetts in April, A. D., 1861.

Also that if at any time premiums are received after due, on being informed that the health of the party whose life is hereby insured is good, it is not considered as forming any precedent in regard to future payments of premiums on said policy, and is in no case to be considered a waiver of the termination of the policy, according to the conditions expressed therein, if any further payment of the premiums be omitted, on the day it is full due.

Also, no assignment or transfer of this policy shall be valid without the written consent of the company; and in case of death the claim of any assignee shall be subject to proof of interest.

In witness whereof the said Berkshire Life-Insurance Company have, by their president and secretary, signed and delivered this contract at Pittsfield, Mass.; but the same shall not be binding until countersigned and delivered by G. S. Hubbard, jr., agent, nor until the advance premium is paid, as by the accompanying receipt; nor unless the said party is alive and in sound health at the date of such payment.

THOS. F. PLUNKETT, *President.*
JAMES W. HULL, *Asst. Secretary.*

Countersigned at Chicago, Illinois, this 22d day of August, 1872.
G. S. HUBBARD, JR.,
Agent.

36 [No. 11462.—Term, life.]

Berkshire Life-Insurance Company, incorporated by the legislature of Massachusetts, 1851.

$765.00 premium.] [$10,000 amount.

This policy of insurance witnesseth that the Berkshire Life-Insurance Company, in consideration of the representations made in application No. 11462, on which this policy is issued, and of seven hundred sixty-five dollars, to be paid by Henry W. Bigelow, on or before the 14th day of August, at noon, in every year during the continuance of this policy, or its equivalent in quarter, thrice, or half yearly payments in advance, do assure the life of Henry W. Bigelow, of Chicago, Cook Co., Illinois, in the amount of ten thousand dollars, for the term of life, payable to his executors, administrators, or assigns.

And the said company do hereby promise and agree well and truly to pay, or cause to be paid, at their office, the said sum insured to the above-named party, his guardians, executors, administrators, or assigns, whenever the same becomes due, viz, within three months after due notice and satisfactory proof of the death of the said Henry W. Bigelow, during the continuance and before the termination of this
37 policy, deducting therefrom the balance of the year's premiums, if any, and all premiums for which credit may have been given, and interest, or other obligations remaining unpaid at that time; and also to divide equitably among the holders of policies which have not terminated except by death the surplus premiums, agreeably to the provisions of the charter of said company.

Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted upon these express terms and conditions:

That the person whose life is hereby insured shall have liberty to reside within any of the settled parts of the United States and Territories, or the Dominion of Canada, between the twenty-fifth and forty-eighth degrees of north latitude, and in California, and to travel on any of the ordinary routes by land or water within the same, and to go as a passenger on any of the usual routes by the usual modes of conveyance along the Atlantic coast of the United States, New Brunswick, and Nova Scotia, of the St Lawrence River, with liberty to touch at any intermediate ports and adjacent islands, and to occasionally make excursions, by boat or vessel, on the sea-coast, or on any river, lake, or pond, for health, recreation, or sporting, and to go as a passenger on any first-class vessel between the Atlantic ports of the United States and Europe, and to travel and reside in such parts of Europe as are in a state of peace.

38 Provided that in case the said assured party shall, without the consent of the company previously given in writing, enter upon a voyage or passage upon the seas, except as permitted herein, or go to remain over one month in any part of the year beyond the limits hereinbefore named for travel and residence, or go south of the latitude of the southern boundary-line of the States of Virginia and Kentucky between the first day of July and the first day of November, or shall enter into any military or naval service whatsoever, (the militia not in active service excepted,) or shall be personally employed on a railroad-train or steamboat, or in ocean or inland navigation, (and such consent, if applied for, shall be granted for a fair additional premium,) or shall be personally employed in mining or in the manufacture or transportation

of gunpowder or other dangerously explosive material, or shall become so far intemperate as to impair his or her health or induce delirium tremens, or shall die in consequence of any injury received when in a state of intoxication, or by suicide, (sane or insane,) or in or in consequence of a duel, or by the hands of justice, or in the violation of or attempt to violate the laws of the United States, or of any State,
39 county, or place, or if the representations made in the application which forms a part of this contract, and upon the faith of which this agreement is made, shall be found in any respect untrue, then, and in every such case, this policy shall be null and void; but in case of suicide the surrender value of the policy at that time will be paid to the party in interest.

Also, in case the said party shall not pay said annual premium on or before the several days above mentioned for the payment thereof, or shall fail to pay when due any notes or other obligations given for premium, or shall otherwise fail to comply with all or any of the terms of this contract, then, and in every such case, the company shall not be liable to the payment of any sum on account of this policy, and it shall cease and terminate; excepting that in case of the non-payment of the stipulated annual premium, the policy will continue in force in accordance with "An act to regulate the forfeiture of policies of life-insurance," enacted by the legislature of Massachusetts in April, A. D. 1861.

Also, that if at any time premiums are received after due, on being informed that the health of the party whose life is hereby insured is good, it is not considered as forming any precedent in regard to future payments of premiums on said policy, and is in no case to be considered
40 a waiver of the termination of the policy according to the conditions expressed therein, if any future payment of the premium be omitted on the day it is full due.

Also *the* assignment or transfer of this policy shall be valid without the written consent of the company; and in case of death, the claim of any assignee shall be subject to proof of interest.

In witness whereof, the said Berkshire Life Insurance Company have, by their president and secretary, signed and delivered this contract at Pittsfield, Mass.; but the same shall not be binding until countersigned and delivered by G. S. Hubbard, jr., agent, nor until the advance premium is paid, as by the accompanying receipt, nor unless the said party is alive and in sound health at the date of such payment.

THOS. F. PLUNKETT, *President.*
JAS. W. HULL, *Asst. Secretary.*

Countersigned at Chicago, Illinois, this 22d day of August, 1872.
G. S HUBBARD, JR., *Agent.*

(Endorsed:) Filed Dec. 13, 1873. Wm. H. Bradley, clk.

41 And also, on the same day, to wit, the thirteenth day of December, one thousand eight hundred and seventy-three, the said defendants filed their pleas to said declaration; which said pleas, (with the exception of such as are dispensed with by a stipulation of the parties,) read in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States, December term, A. D. 1873.

THE BERKSHIRE LIFE-INSURANCE COMPANY *ads.* SOPHIA BIGELOW, ADMINISTRATRIX, AND HENRY P. Bigelow, administrator of the estate of Henry W. Bigelow, deceased. } Assumpsit.

* * * * * * *

And for a further plea in this behalf as to the first count in the
42 said plaintiffs' declaration, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against it, because it says that the said policy of insurance in said first count of said declaration mentioned contains the express provision and condition that in case the said Henry W. Bigelow shall die by suicide, (sane or insane,) that then, and in every such case, this policy shall be null & void; and that it was further provided in said policy that in case of suicide the surrender value of the policy at that time will be paid to the party in interest. And the defendant avers that the said deceased, Henry W. Bigelow, died from the effects of a pistol-wound inflicted upon his person by his own hand; and that the said deceased intended, by inflicting such wound, to destroy his own life. And defendant further avers that the surrender value of said policy at the time of the death of said Henry W. Bigelow, to wit, at the eighth day
43 of February, A. D. 1873, was, to wit, the sum of four hundred and fifty-seven dollars, ($457.) And the said defendant says that, to wit, on the eleventh day of June, A. D. 1873, at, to wit, the northern district of Illinois, it, the said defendant, was ready and willing, and then and there tendered and offered, to pay to the said plaintiffs the said sum of four hundred and fifty-seven dollars, ($457,) being the surrender value of said policy at the date of the death of said Henry W. Bigelow, to wit, on February eighth, A. D. 1873, to receive which of the said defendant, they, the said plaintiffs, then & there wholly refused. And the said defendant in fact further saith that it, the said defendant, always, from the time of the death of said Henry W. Bigelow, at, to wit, the northern district of Illinois aforesaid, has been ready to pay to the said plaintiffs the said sum of four hundred and fifty-seven dollars, ($457,) being the surrender value of said policy at the date of the death of said Henry W. Bigelow, to wit, on February 8th, A. D. 1873, and is
44 now ready to pay the same. And this the said defendant is ready to verify; wherefore it prays judgment, &c.

MATTOCKS & MASON,
Defendant's Attys.

MILLER & FROST,
Of Counsel.

* * * * * * *

And for a further plea in this behalf as to the second count in the said plaintiffs' declaration, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiffs

ought not to have or maintain their aforesaid action thereof against it, because it says that the said policy of insurance in said second count of said declaration mentioned contains the express provisions and condition, that in case the said Henry W. Bigelow shall die by suicide, (sane or insane,) that then, and in every such case, this policy shall be
45 null and void. And that it was further provided in said policy that, in case of suicide, the surrender value of the policy at that time will be paid to the party in interest. And the defendant avers that the said deceased, Henry W. Bigelow, died from the effects of a pistol-wound inflicted upon his person by his own hand; and that the said deceased intended by inflicting such wound to destroy his own life. And defendant further avers that the surrender value of said policy at the time of the death of said Henry W. Bigelow, to wit, at the eighth day of February, A. D. 1873, was, to wit, the sum of seven hundred and eighteen dollars, ($718;) and the said defendant says that, to wit, on the eleventh day of June, A. D. 1873, as, to wit, the northern district of Illinois, it, the said defendant, was ready and willing, and then & there tendered and offered, to pay to the said plaintiffs, the said sum of seven hundred and eighteen dollars, ($718,) being the surrender value of said policy at the date of the death of said Henry W. Bigelow,
46 to wit, on February eighth, A. D. 1873, to receive which of the said defendant, they, the said plaintiffs, then & there wholly refused. And the said defendant in fact further saith that it, the said defendant always, from the time of the death of said Henry W. Bigelow, at, to wit, the northern district of Illinois aforesaid, has been ready to pay, & still is ready to pay, to the said plaintiffs, the said sum of seven hundred and eighteen dollars, ($718,) being the surrender value of said policy at the date of the death of said Henry W. Bigelow, to wit, on February 8th, A. D. 1873.

And it is now ready to pay the same. And this the said defendant is ready to verify. Wherefore it prays judgment, etc.

MATTOCKS & MASON,
Defendant's Attorneys.

MILLER & FROST,
Of Counsel.

(Endorsed:) Filed Dec. 13, 1873. W. H. Bradley, clerk.

47 And afterwards, to wit, on the 30th day of December, one thousand eight hundred and seventy-three, the said plaintiffs by their attorneys come and file their replications to the foregoing pleas, to wit:

In the circuit court of the United States for the northern district of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

SOPHIA BIGELOW, ADMINISTRATRIX, AND HENRY P. Bigelow, administrator of the estate of Henry W. Bigelow, deceased,	Assumpsit.
v.	
THE BERKSHIRE LIFE-INSURANCE COMPANY.	

* * * * * * *

And the said plaintiffs, by way of replication to the plea of the said

defendant secondly above pleaded to the said first count of the
48 said declaration, say that they, the said plaintiffs, by reason of anything by the said defendant in that plea alleged ought not to be barred from having and maintaining their aforesaid action against it, the said defendant, because they say that the said deceased, Henry W. Bigelow, at the time when he inflicted the pistol-wound upon his person by his own hand, was of unsound mind, and wholly uncon'cious of the act. And this the plaintiffs are ready to verify. Wherefore they pray judgment, &c.

* * * * * * *

And the plaintiffs, by way of replication to the said plea by the defendant secondly above pleaded to the said second count of said declaration, say that they, the said plaintiffs, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining their aforesaid action against it, the said defendant, because they say that the said deceased, Henry W. Bigelow, at the time when he inflicted the pistol-wound upon his person by his own
49 hand, was of unsound mind, and wholly uncon'cious of the act. And this they are ready to verify. Wherefore they pray judgment, &c.

HOYNE, HORTON & HOYNE,
Plffs. Attys.

(Endorsed:) Filed Dec. 30, 1873. Wm. H. Bradley, clk.

And afterwards, to wit, on the 6th day of January, one thousand eight hundred and seventy-four, the said defendants by their said attorneys came and file their rejoinders and demurrer to said replications of the plaintiff, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois.

SOPHIA BIGELOW, ADMINISTRATRIX, AND HENRY P. Bigelow, administrator, of the estate of Henry W. Bigelow, deceased,	Assumpsit.
50 v. THE BERKSHIRE LIFE INSURANCE COMPANY.	

* * * * *

And the said defendant saith that the replication of the said plaintiffs to the said second plea of the said defendant to the said first count of the said declaration, and the replication of the said plaintiffs to the said second plea of the said defendant to the said second count of the said declaration, and the matters therein contained, in manner & form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendant; and that it, the said defendant, is not bound by law to answer the same; and this the said defendant is ready to verify. Wherefor', by reason of the insufficiency of the said replications in this

behalf, the said defendant prays judgment if the said plaintiffs
51 ought to have or maintain their aforesaid action thereof against it, &c.

MATTOCKS & MASON,
Defendant's Attys.

MILLER & FROST,
Of Counsel.

(Endorsed:) Filed Jan. 6th, 1874. W. H. Bradley, clk.

And afterwards, to wit, on the twenty-seventh day of January, one thousand eight hundred and seventy-four, in the record of the proceedings of said court in said cause is the following entry, to wit:

SOPHIA BIGELOW, ADMX., &C.,
v.
BERKSHIRE LIFE-INSURANCE COMPANY. } Assumpsit.

Now come the parties by their attorneys, and now comes on to be heard the demurrer of the defendant to the replication of the plaintiff to the first plea of the defendant to the first and second counts of the declaration, and to the replication to the second plea to the first
52 and second counts of the declaration; and after hearing the arguments of counsel, the court takes the same under advisement.

And afterwards, to wit, on the 6th day of August, one thousand eight hundred and seventy-four, in the record of the proceedings of said court in said cause is the following entry, to wit:

SOPHIA BIGELOW, ADMX. AND HENRY P. BIGELOW, admr., etc.,
v.
THE BERKSHIRE LIFE-INS. CO. } Assumpsit.

Now come the parties by their attorneys; and the court having considered, and being now fully advised on the demurrer of the defendant to the plaintiffs' replication to the pleas filed herein, sustains the same; to which ruling of the court the plaintiffs, by their attorney, excepts; and the said plaintiffs, electing to abide by their said replications, it is thereupon considered and adjudged by the court that said
53 plaintiffs take nothing by reason of their suit in this behalf; and that the defendant do have and recover of and from the said plaintiffs the costs and charges paid, laid out, and expended in this behalf, and that execution issue therefor.

And afterwards, to wit, on the twenty-third day of September, one thousand eight hundred and seventy-four, the following stipulation was filed in said cause, to wit:

In the circuit court of the United States for the northern district of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

SOPHIA BIGELOW, ADMINISTRATRIX, AND Henry B. Bigelow, administrator, of the estate of Henry W. Bigelow, deceased,
v.
THE BERKSHIRE LIFE-INSURANCE CO. } Assumpsit.

It is hereby stipulated and agreed by and between the parties to

the above-entitled cause that said defendant have leave to withdraw
54 the plea of the general issue to the declaration, and also its first plea to the first count and its first plea to the second count of said declaration filed herein, and its rejoinder to the replications of the plaintiffs to said pleas filed herein; and that the plaintiffs also have leave to withdraw their replications to said pleas filed herein; and that judgment shall be entered for the defendant upon the demurrer to the third and fifth replications; the intention of this stipulation being to leave the record clear of all issues except those involved on the judgment on demurrer in favor of deft.

MILLER & FROST,
Att's for Deft.
HOYNE, HORTON & HOYNE,
For Plff.

(Endorsed:) Filed Sept. 23, 1874. W. H. Bradley, clk.

And afterwards, to wit, on the 23d day of September, one thousand eight hundred and seventy-four, the following bond was filed in said court in said cause, to wit:

55 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court, northern district of Illinois, July term, A. D. 1874.

Know all men by these presents that Sophia Bigelow, administratrix, and Henry P. Bigelow, administrator, of the estate of Henry W. Bigelow, deceased, as principal, and as surety, of the county of Cook, and State of Illinois, are held and firmly bound unto the Berkshire Life-Insurance Company, in the sum of two hundred and fifty dollars, good and lawful money of the United States of America, to be paid to the said The Berkshire Life-Insurance Company, or to its certain attorney, successors, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, and our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this day of August, in the year of
56 our Lord one thousand eight hundred and seventy-four.

The condition of this obligation is such, that whereas the said The Berkshire Life-Insurance Company did, on the sixth day of *of* August, A. D. 1874, in the circuit court of the United States for the northern district of Illinois, and of the July term of said court, recover a judgment against the above-bounden Sophia Bigelow, administratrix, and Henry P. Bigelow, administrator, of the estate of Henry W. Bigelow, deceased, for the costs of suit; from which said judgment of said court said Sophia Bigelow, administratrix, and Henry P. Bigelow, administrator, of the estate of Henry W. Bigelow, deceased, have prayed for and obtained an appeal to the Supreme Court of the United States:

Now, therefore, if the said Sophia Bigelow, administratrix, and Henry P. Bigelow, administrator, of the estate of Henry W. Bigelow, deceased, shall prosecute his said appeal with effect, and moreover pay the costs, interest, and damages rendered or to be rendered against the*n*, in case the said judgment shall be affirmed in said Supreme Court, then

57 this obligation to be void; otherwise to remain in full force and virtue.

SOPHIA BIGELOW, *Ad'x.* [SEAL.]
HENRY P. BIGELOW, *Ad'r.* [SEAL.]
WILLIAM W. LOCK. [SEAL.]

Sealed and delivered in the presence of—

Approved:

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed Sept. 23, 1874. W. H. Bradley, clerk.

58 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy of the proceedings of said court in the case wherein Sophi Bigelow, ad'x, &c., was plaintiff, and the Berkshire Life-Insurance Com pany was the defendant, as the same appears from the records and files of said court in said cause now remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 6th day of October, A. D. 1874, and of our Independence the 99th year.

[SEAL.] WM. H. BRADLEY, *Clk.*

59 UNITED STATES OF AMERICA:

In the Supreme Court of the United States, October term, 1874.

SOPHIA BIGELOW, ADMINISTRATRIX,
vs.
THE BERKSHIRE LIFE-INS'E COMPANY OF MASS.

And now comes the plff. in error, by Hoyne, Horton & Hoyne, her attorneys, & says that in the record & proceedings there is manifest error in this, to wit: (1.) That the court below erred as to the law of this case in deciding that the demurrer of defendants to the replications of plaintiff to the pleas of defendants should be sustained; (2.) The circuit court erred in refusing to sustain the sufficiency of plaintiff's replications in law upon demurrer to the pleas of defendants secondly above pleaded to said plaintiff's 1st & 2d counts of the declaration filed in said cause. (3.) Sustaining the demurrer of defendants to plff.'s replications as not being sufficient in law, &c. By reason whereof, the plaintiff prays that said judgment may be reversed.

TH. HOYNE,
For Plff. in Error.

HOYNE, HORTON & HOYNE.

60 UNITED STATES OF AMERICA, *ss:*

The United States of America to the honorable the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceeding, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, between

Sophia Bigelow, administratrix, and Henry P. Bigelow, administrator, of the estate of Henry *P.* Bigelow, deceased, plaintiffs, and the Berkshire Life-Insurance Company, defendant, a manifest error hath happened, to the great damage of the said Sophia Bigelow, administratrix, and Henry P. Bigelow, administrator, of the estate of Henry W. Bigelow, deceased, as by the'r complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning
61 the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court, the 6th day of October, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Cir. court U. S., northern dist. of Ill. Sophia Bigelow, admx., et al., &c., v. The Berkshire Life-Insurance Co. Writ of error.

62 By the honorable Henry W. Blodgett, acting judge of the circuit court of the United States for the northern district of Illinois, to the Berkshire Life-Insurance Company, greeting:

Whereas Sophia Bigelow, administratrix, and Henry P. Bigelow, administrator, of the estate of Henry W. Bigelow, deceased, have lately appealed to the Supreme Court of the United States, from a judgment lately rendered in the circuit court of the United States for the northern district of Illinois, made in favor of you, the said The Berkshire Life Insurance Company, and has filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the second Monday instant, to do and receive what may appertain to justice to be do' in the premises.

Given under my hand at the city of Chicago, in the northern district of Illinois, in the seventh circuit, on the seventh day of October, in the year of our Lord one thousand eight hundred and seventy-four.

H. W. BLODGETT, *Judge.* [SEAL.]

63 Due service of the within citation admitted.

MILLER & FROST,
For Defendants.

OCT. 8, 1874.

(Indorsement on cover:) No. 124. Sophia Bigelow, administratrix, and Henry P. Bigelow, administrator, of the estate of Henry *P.* Bigelow, deceased, plaintiffs in error, vs. The Berkshire Life-Insurance Company. N. Illinois C. C. U. S. Filed 12th October, 1874.

United States Supreme Court,

OCTOBER TERM, 1876.

SOPHIA BIGELOW, Adm'x of Henry W. Bigelow, Deceased,
Plaintiff in Error,
vs.
THE BERKSHIRE LIFE INS. CO.,
Defendant in Error.

124.

Error to Northern Dist. Illinois.

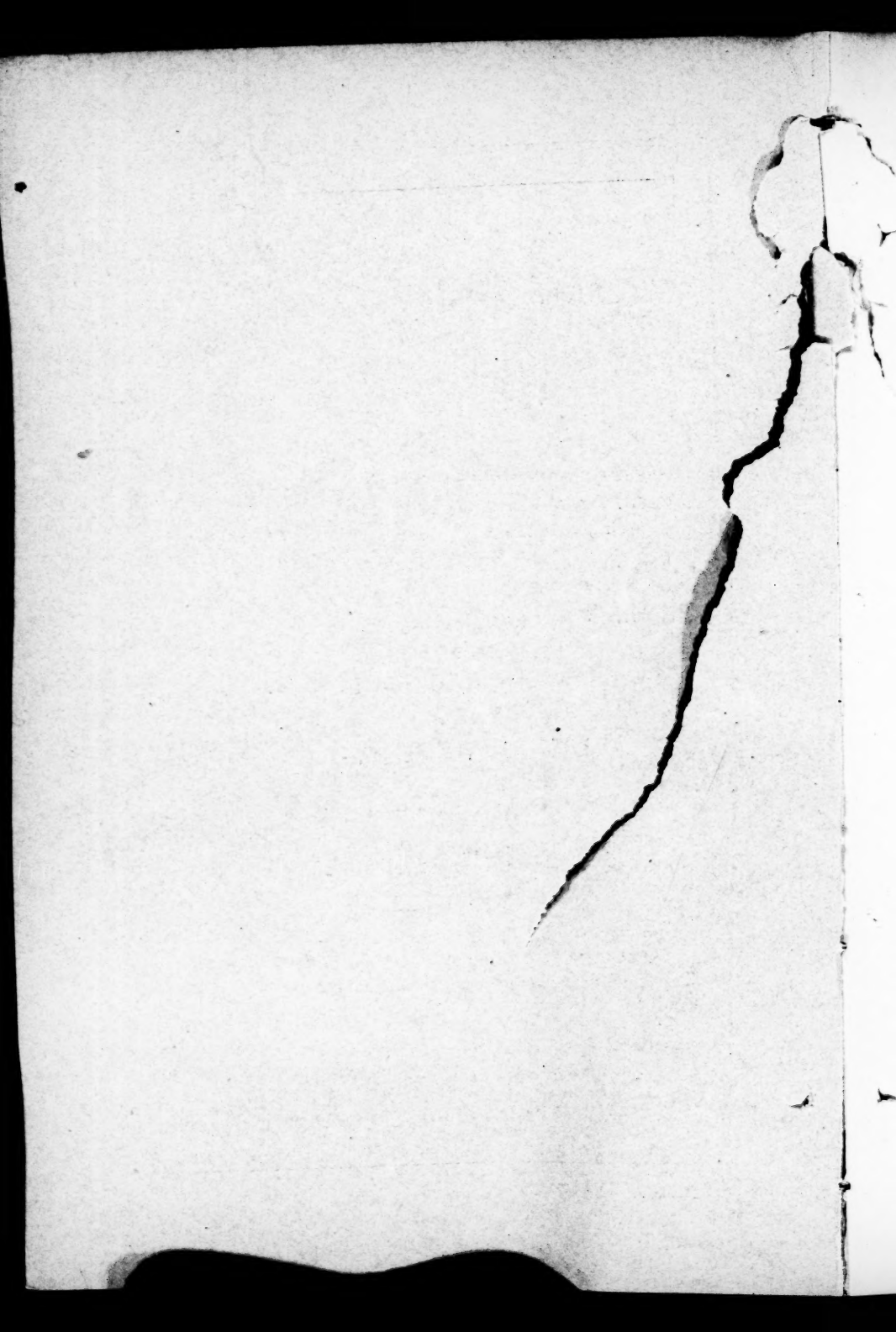
BRIEF FOR THE PLAINTIFF IN ERROR.

HOYNE, HORTON & HOYNE.

Can an Insane Person commit an Act of Suicide in Law?

Can such an Act fall within the terms of the Policy, "Suicide, Sane or Insane?"

CHICAGO:
Beach, Barnard & Co., Legal Printers, 98 Randolph Street.
1876.



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124.
Error to Northern Dist. Illinois.

BRIEF FOR THE PLAINTIFF IN ERROR.

The suit below was brought in the State Circuit Court of Cook County, against defendants in error upon two certain policies of life insurance, for $10,000 each; dated in August, 1872, which became due and payable by the death of the insured in 1873.

The proof of the cause of the death of insured, established the fact, about which there is no controversy whatever, that he committed an act of self-destruction by shooting himself while in a condition of mental insanity, with a pistol, on the 8th day of February, 1873. The suit was commenced on the 8th day of September, 1873,

and removed to the U. S. Circuit of the Northern District of Illinois, by defendants, in October, 1873.

Both the policies sued upon, contain a special proviso to the effect: that if the assured "shall so far become intem- "perate as to impair his health—or induce delirium tremens "—or shall die in consequence of any injury received when "in a state of intoxication—or *by suicide—sane or insane*, "or in consequence of a duel; or by the hands of Justice; "or in the violation of, or attempt to violate the laws of the "United States, or of any State, country or place; that then "and in every such case, the policy shall be null and "void."

The declaration of plaintiff contained two counts. The defendants filed a special plea to each count, setting out the foregoing proviso, and stated that there was a violation thereof, by alleging, "that the *deceased Henry W. Big-* "*elow died from the effects of a pistol wound inflicted by* "*his own hand, and that said deceased intended by inflicting* "*such wound, to destroy his own life.*"

To the above pleas so pleaded to the first and second counts of said declaration, plaintiff replied, "that at the "time when said deceased inflicted said wound upon his "person by his own hand, he was of *unsound mind, and* "*wholly unconscious of the act.*"

To the above replication the defendants filed a *demurrer*, upon which judgment was rendered against the plaintiff by the court.

The decision of the court on this question, as to the sufficiency in law of the replication, that at the time of his self-destruction, deceased was of *unsound mind*, or *insane*, and *wholly unconscious of the act he was committing*, is the only ground upon which this writ of error has been sued out, and the case brought into this Court.

POINTS.

I. The error of the court below consists in holding that a *death self-inflicted*, was within the meaning of the proviso in the policy; when, as admitted by *demurrer to the* replication, the truth was, that at the time of his self-destruction, deceased was wholly *unconscious of the act* he *committed, by reason of insanity.*

II. The court sustained the demurrer to plaintiff's replication to the plea that deceased died from the effects of a *pistol wound inflicted by his* own hand, intending to destroy his own life, when by said demurrer the fact appears by replication, that at the time of the inflicting of said wound, deceased "*was of unsound mind and wholly unconscious of the act.*"

III. The court below erred in holding, that any death *self-inflicted*, was within the meaning of the proviso set forth, unless it was expressly alleged to be a felonious and willful act, and committed by a person of "*sound mind.*"

IV. The plaintiff will insist that within the meaning of the policy of insurance in this case, a death from "*suicide, sane or insane,*" can only mean *an act of self murder*, a *felo de se*, or one who deliberately puts an end to his own life; and that *suicide is legally impossible* to any person not of years of *discretion*, and of a "*sound mind,*" for it must "happen by malice and intent; and be a voluntary and in-"telligent act, in connection with that of human reason "and will."

V. The court should have permitted the *insanity* or "*unsoundness of mind*" *of deceased* to be shown, with a view of disproving the allegation in the pleas, that Henry W. Bigelow "*intended to destroy his own life,*" or that he had been guilty of "*suicide, sane or insane.*"

I.

Suicide by an insane person legally impossible.

Perhaps the very first question under the policy in this case, will be the meaning of the language used, "*Suicide*, "*sane or insane*." Such a thing as *suicide insane*, is entirely outside of all *legal* definitions of *suicide*, as a suicide can only be the act of some person who is of *sound* mind, and in searching over the English dictionaries and lexicons of our language, *Suicide* will be found defined as the act of destroying one's *own life by a person of sound mind.*

Mr. Justice Nelson expresses the legal meaning in the case of *Breasted* v. *The Farmers' Loan & Trust Co.*, 4 Hill, 75, in which he says, "that suicide involves the de- "liberate termination of one's own existence while in the "possession and enjoyment of his mental faculties—self- "slaughter by an insane man or lunatic is not within the "meaning of the law."

4 Blackstone, 187, defines suicide as "*self murder;* that "it admits of *accessories before* and *after the fact*." A *felo de se* is one who *deliberately* puts an end to his own life; or commits any unlawful malicious act, the consequence of which is *his own death*, and the party must be of years of *discretion, and in his senses*, else it is no crime.

Webster and Worcester define suicide as "the act of "*designedly* destroying one's own life, committed by a per- "son of years of *discretion* and of *sound mind—self-mur-* "*der*—one guilty of *self-murder*. *A felo de se*," &c., &c.

Now, if language is to have the same meaning in *this* covenant as *elsewhere*, a *suicide cannot be an insane one*, or that of *an insane person*; in terms the words themselves contradict the conclusion. Nothing is left for construction.

The court below, however, unlawfully denied our right to show that the *act of self-destruction* was that of a per-

son of "*unsound mind, and unconscious of his act.*" The effect of the pleading was an express denial that the deceased had come to his death *by* "*suicide, sane or insane,*" within the meaning of the language used by the parties in the contract, and contrary to all the *legal definitions* of the word "*Suicide.*"

The Court, in deciding against the plaintiff below upon the demurrer, which admitted the facts as stated in the replication, seems not only to have assumed that if any person insured took *his own life, sane or insane,* "that he must "be held to have committed *suicide, sane or insane,*" and that *suicide* implied sanity. This doctrine not only disregards the meaning of the language itself, as well as the law, in construing the proviso under consideration, but the Court also denies the right of the plaintiff to show that the act in question must have been the result of *accident* in an insane person arising out of the *disease;* for it is admitted by the demurrer to replication that deceased was, at the time, of "*unsound mind, and unconscious of the act*"!

II.

AN ACT OF SELF-DESTRUCTION HAS NEVER BEEN HELD TO AVOID A POLICY OF LIFE INSURANCE, WHEN THE INSANE PERSON HAS BEEN SO UNSOUND OF MIND AS TO BE UNCONSCIOUS OF THE ACT HE WAS COMMITTING.

The Court, in deciding that it made no difference whether the deceased was *sane* or *insane*—if he committed an act of *self-destruction*—has entirely ignored all the *decided cases.* In all those cases it has been held, that if the death was involuntary, or the effect of an *insane* or *delirious impulse,* it could not be considered as the act of the *person committing it,* BUT AS THE ACT OF GOD. This brings us to consider the decided cases. The language of the contract, generally found in all those cases, expressly

provides, in substance, that if the assured came to his death from any act *self-inflicted*, the assurer was to be held discharged. But the Courts have held in those cases *insanity* to take such an act of self-destruction out of the category of acts for which the law holds the assured responsible, if, at the time, he did *not know and intend*, or could not control the consequences of the act.

The leading cases decided upon this subject are easily collated—and referred to—as follows:

Borodaile v. *Hunter*, 5 Manning & Granger, 639.

Hartman v. *Keystone Ins. Co.*, 21 Penn., 466.

Dean v. *Mutual Life Ins. Co.*, 4 Allen, 96.

Cooper v. *Mass. Life Ins. Co.*, 102 Mass., 227.

Eastbrook v. *Union Ins. Co.*, 54 Maine, 224.

Breasted v. *Farmers' Loan and Trust Co.*, 4 Hill, 73: 4 Selden, 299.

2 Bigelow, Life Ins. Cases, 4.

Bliss Life Insurance, Sec. 243, p. 415.

Pierce v. *Travelers' Ins. Co.*, (recent Wisconsin case,) 3 Ins. Law Journal, 422.

Van Zandt v. *Mutual Benefit Life Ins. Co.*, 3 Ins. Law Journal, 208.

Now, in all the cases cited, there is no doubt raised as to the meaning of the equivocal or incongruous use of terms in the policy. The contract itself was clear. The controversy, in each of the cases, assumed that *insanity absolved* every victim of *self*-destruction from the consequences of *his own act;* and the only difference between the different cases is, or was, the *greater or less degree of the disease apparent*, and how far, in the particular case, it deprived the deceased of intelligence, and capacity to understand the nature and *intend* the consequences of the act which deprived him of life.

But there is no conflict in these cases as to the law which the courts find to govern them, wherever it is clearly made apparent that death was an *involuntary* or *accidental* result of the disease. Neither are we aware of a single exceptional case of an action upon a life insurance policy, or a trial in which was involved the legal responsibility of the individual for acts of a *criminal* or *civil* nature, where it has ever been held that any responsibility whatever, for any purpose, attached to mere *acts of madness and insanity?*

Even if the Court could utterly ignore or change the meaning of the language in this policy, which imports that the "*suicide, sane or insane,*" must be a *criminal* and *voluntary act* of self-destruction; yet there would still remain the distinction which the courts make between the competency and incompetency of insane persons. According to some cases, criminal self destruction *is imputed to insane persons* when insanity is *only partial, and not general.* The line is well defined in distinguishing between the class who, though laboring under some degree of hallucination, retain consciousness sufficient to intelligently direct and control their movements, and the great mass of cases, where all reason and intelligence are blotted out, and the person becomes, as in this case it is alleged, *entirely unconscious of his act.*

III.

We make the point that, in all cases, sane or insane, the *Law allows plaintiff to show that the death was not intended by deceased, but that it was an involuntary act, or a result of mental disease.*

We leave now the *literal signification* of terms, and proceed to discuss the general question. Suppose the language, "*suicide, sane or insane,*" *did not mean* that an act of intended self-destruction was the kind within the con-

templation of the parties, could there have been a forfeiture of the policy by *an insane act?*

If the ruling of the court below is to be held as the law of these cases, it would be only necessary for any assurer under this contract to show that *any act of self-destruction was committed* by a person, *sane or insane*, and when, in pleading, the *plaintiff denied* that there was any thing *deliberate* or *voluntary* in the act of deceased, but that he *was of unsound mind and unconscious of the act*, there would be an utter exclusion of all inquiry into the question of whether the killing had *been suicidal* and deliberate, or involuntary and accidental — within the very language of the covenant through which this assurer seeks absolute immunity.

In the decided cases to which we refer, on the contrary, the fact whether the deceased *was or was not insane* at the time of his self-destruction, and that his madness was of that degree in which he could not be legally held answerable for his conduct, was the *whole gist of the controversy*. Here, on the contrary, by the pleadings, that *fact itself* is admitted by demurrer.

In the very strongest of the leading cases which will be cited against a recovery by the plaintiff in this case, will be found the language in which the English Court holds, (*Borodaile* v. *Hunter*, 5 Manning and Granger, 639) :

" That, in order to bring the act of self-destruction with-
" in the proviso, it must be the voluntary and willful act of
" a man having, at the time, sufficient powers of mind and
" reason to understand the physical nature and conse-
" quences of such act, and having, at the time, a *purpose*
" and *intention* to *cause his own death by that act.*"

We have appended to this argument the brief reasoning of Judge BLODGETT in deciding the point against plaintiffs in the court below:

" It will appear that the judge thought that the Insur-
" ance Company, having the *power to limit its liability to*

" *deaths* occurring while the assured was *sane*, could deny " its liability in all *other cases*, and the judge thinks the " company, being at liberty to *limit its liability* to cases " where the assured dies while sane," he says, though the question is not *free from doubt*, he will sustain the demurrer. (See *Judge Blodgett's* opinion appended at back of brief.)

According to the logic of this decision, an *insane person* taking out a policy, his family or representatives can take nothing under such a provisio, if he dies while *insane*. According to the doctrine stated, a person becoming *insane*, and subject to all the perils to life that render all persons alike subject at every moment to death, would, within this construction of the policy, forfeit his rights by any accident that should befall him, causing his death, before he recovered from his disease.

And again, though a *sane person* took this policy and became sick, so that in an access of fever a *delirium set in*, during which, in some violent paroxysm he caused his own death, the widow or representative could not recover, because his death did not occur *while sane*.

While such a contract might have been framed, perhaps, it is not *the contract before the Court*. The contract in this case especially provides against a *suicide, sane or insane*, and not against the death of the assured while he is insane. It is only when they take their *own lives* as *suicides*, and not as insane persons, that the provision applies, and not when they die because of a calamity or disease which destroys their reason.

Now all courts have been compelled to recognize certain distinctions, even in insane cases. There is a broad line of distinction marked between *partial* insanity and general mania. Some organs of the mind remain sound, while others become diseased. Under some circumstances an insane person *may* retain his intellectual and moral powers, while as to special cases, he is utterly deranged, and be-

comes the instrument of the INSANEST *impulses*. The Supreme Court of Illinois, in a case of murder, reversed the judgment below on account of this partial insanity, in Hopps, the slayer of his wife, because of a hallucination on the subject of her infidelity. Justice Breese says it had become a deep seated delusion.

Hopps Case 31. Ills. 392

The Court say "that whenever it should appear that at "the time of the doing the act charged, the prisoner was "not of sound mind, but afflicted *with insanity*, and such "affection was the efficient cause of the act, and he would "not have done the act in question without he had been "so afflicted, justice and humanity alike require his "acquittal."

The position of counsel in this case, which the court below seems to have sustained, is, that inasmuch as the company had the power to *restrict their liability* as to any death self-inflicted; that they had done so by the language used in their contract; that to discharge them it is only necessary it should appear that death had been *self-inflicted;* that this made deceased a *suicide*, "sane or insane," and it makes no difference as to what mental condition existed, as this could not change the fact, and the legal character of the act must remain the same under whatever condition.

Arriving at this conclusion, the Court must first utterly ignore the meaning of the word *suicide*, and hold every act of *self-destruction* to be an act of *self-murder*, criminal, voluntary, and deliberate, and also exclude from consideration the *scientific truth*, that there is not only insanity, but *degrees of insanity*.

That even insanity may be such as to leave the subject in possession of so much of his reason as to be *conscious* and *responsible*, so that, indeed, his act of *self-destruction* might be held as criminal as that of the actual suicide in legal contemplation.

From this distinction even, and it is the only field of dis-

cussion open in the other cases, *we are to be excluded.* The court below admits of no distinction being made *in even insane cases.* The decision presupposes that all are alike *guilty* or alike innocent. *Sane or insane*, there are no degrees; and partially or wholly insane makes no difference. Death from *suicide, sane or insane*, presupposes that an *insane person* can be guilty of suicide; and the Court refuses to hear the issue which will establish the contrary in law or in fact.

It does seem hardly possible to pass over the words *death from suicide* or *self-murder* in this policy, without concluding that *insane* persons were intended to be *outside the exception;* but even if that were not so, yet as between *two classes of insane persons, one* retaining sufficient reason to control their acts, and the other totally *mad*, the Court should *presume* that *only insane persons capable of distinguishing* as to the moral quality and consequences of their acts were intended, and that only such insane persons could have been within the contemplation of the parties, according to the language used in connection with the words suicide, *sane or insane.*

IV.

A REVIEW OF THE DECIDED CASES ALL ESTABLISH THAT ONLY PERSONS CAPABLE OF DISCRIMINATING THE PARTICULAR ACT ARE TO BE HELD IN LAW ACCOUNTABLE.

(1.) The case of *Van Zandt* v. *Mutual Life Ins. Co.*, 55 New York Rep., 178.

It is there said, in construing one of the ordinary policies, where the *proviso contained the words*, "*or who dies from* "*wounds inflicted by his own hand*," that it was not every degree of insanity which would so far excuse the party taking his own life as to make the insurer liable. But the

real question was whether the insane person did the act "*consciously and voluntarily, or whether from disease his* "*mind had ceased to control his actions.*"

And the Court in this case reiterates what we have stated, that "the interest on the part of the insured in "inserting the exceptions was evident.

"The policy creates in the insured a pecuniary interest "in his own death. To a man laboring under the pressure "of poverty, and the urgent wants of a dependent family, "or of his inability to discharge pecuniary obligations, the "policy offers a temptation to self destruction. To pro- "tect the insurer against the risk arising out of this "temptation is the object. The condition, therefore, ought "to be so construed as to exclude *only those cases* in which "these motives could not have operated, such as accident "or delirium."

"*Van Zandt* v. *Mutual Benefit Life Ins. Co.*,
"55 N. Y. R., 177."

(2.) THE CLAUSE, "SHALL DIE BY HIS OWN HAND, SANE OR INSANE," INTERPRETED AND CONSTRUED.

Mr. Bliss, in his recent work—Bliss on Life Insurance—sec. 243, p. 415, examines the precise meaning of the words, "sane or insane," in the present policies, in conjunction with, *shall die by his own hand.* He cites a late case, *Gorgoza* v. *Knickerbocker Life Ins. Co.*, case now in N. Y. Court of Appeals (published in 8 Albany Law Jour., p. 10).

The words in the clause were, "in case he shall *die by by his own hand, sane or insane*," and it was held that the words *sane* or *insane* had no further effect than to render the policy void, if the insured *intended self-destruction while in a state of insanity.* If the act was wholly *involuntary*, whether the result of accident or a blind impulse over which he had no control, he being incapable of exercising his will, the company were liable; but if the act

was *voluntary*, or *intentional*, then they were not liable; that the introduction of these words did not alter the question, whether the deceased did or did not die by *his own act or hand*, in the sense of the law, nor the settled rule of construction, that those words require an *intentional, voluntary act of self-destruction*, if a sane man may die by his *own hand*, without meaning it, and an *insane man* may have wit and *will enough* left to *design* and *contrive his own death*. * * * * * The words, "*sane or insane*," make no difference; they were but words of description, like "sick or well," "drunk or sober," "old or young," covering any possible mental condition, but making no difference in the question.

And the Court charged the jury that "if the mental "condition of the assured was such, at the time the pistol "exploded, that the act was *not* a *voluntary act*, the "exception in the policy did not apply, and the company "would be liable." But on the other hand, if the jury saw any evidence warranting them in the conclusion that the *insane* person *intended self-destruction*, either for the purpose of relieving himself from the condition he was in, or any other purpose, then the plaintiff would not be entitled to recover.

"The primary and important question to determine is "whether he was actuated by a *will*, whether it was a "*voluntary act*, or whether it was from an *impulse over* "*which he had no control*. If it was the latter, then he "was not a responsible agent, and it is not a case which "exonerates the company from liability.

On appeal to the General Term, Court say: "The in- "troduction of the words '*sane or insane*,' in this policy can "have no further effect under the above decisions than to "hold the policy void—*if the insured intended self-destruc-* "*tion while in a state of insanity*."

(3.) "*Difference between the words: 'Suicide, sane or*

" *insane,' and the words 'in case he shall die by his own* " *hand.'*"

The court will pardon us, for noting here that in the case cited above, the language did not necessarily, *ex vi termini*, import as in the case at bar; by use of the word *suicide*; that the act of self-destruction, must be *intentional, criminal* and felonious; while in the case at bar, upon the face of the pleading, the mental unsoundness of the deceased being assumed and admitted, as a fact; by defendants' demurrer the *death by suicide*; within the meaning of the law, and the signification of language, *impossible*; to a person of *unsound mind.*

(4) Wisconsin decides that a *suicide, felonious or otherwise must be intentional.*

The late case of *Pierce* v. *The Travelers' Insurance Co.*, (not yet reported.) The policy contained the words: "*If he* " *shall die by suicide, felonious or otherwise, sane or insane,*" the court holds that the interpretation of the contract must be the same as in the leading English case of *Borodaile* v. *Hunter*, that where the assured "*intentionally killed himself*," though not *feloniously*, when at the time, the *insane* person had sufficient mental capacity to comprehend and to foresee and estimate the physical consequences of his self-destruction, that would be a *suicide*, within the meaning of the exception contained in the policy.

And the Wisconsin Court further say, that an *unintentional* " or accidental act of self-destruction committed un- " der the influence of delirium, which never received and " never deserved THE NAME OF SUICIDE, is not within the " *spirit or intent* of the proviso." And yet this was the case relied upon below, to conclude plaintiff from not only showing that deceased was insane, or of *unsound mind*, at the time he committed the act, but that he was wholly *unconscious of the act he committed.* It was argued it made no difference, as under the covenant of these policies *any*

act of self-destruction, by the assured; while *in an insane condition of mind*, intentional or not, involuntary or premeditated. The uncontrollable impulse of insanity or the free and deliberate act of reason, or mental consciousness; the *coercion of man*, or that of *Heaven*, made no difference. The *letter* of the "bond" secured impunity to the *assurer*, if only the assured *died from suicide in a "sane or insane"* condition.

(5) *The literal meaning* of the words "*sane or insane*" in their connection with the other words of *the contract*.

A suicide, "*sane or insane*," is a connection of words without meaning, if taken apart from their literal signification, or taken out of the contract. The real meaning as they stand connected with the other words in the context of the proviso, is: that if the assured, *be he sane or insane* at the time he commits a suicide, *i. e.*, self-murder, the policy is to be *void and of no effect*.

The Supreme Court of New York, in the case of *Breasted* v. *The Farmers' Loan & Trust Company*, 4 Hill, 75, decided that the words "*death by his own hand*," in the connexion in which the words stood, indicated that they were intended to express a *criminal act*, as they were found in connexion with other words of similar import signifying a death—by the "*duel*,"—by the *hands of justice, etc., etc.;* and the words *suicide, sane, or insane*, are found in conjunction with similar words in this policy.

The court say: that this association may well characterize, and determine the somewhat indefinite and equivocal import of the phrase "*death from his own hand*," speaking legally also, and "the policy should be subject to this "test; self-destruction by a fellow being, *bereft of reason*, "can with no more *propriety be ascribed to the act of his own* "*hand*, than to the deadly instrument that may have been "used for the purpose. The drowning of Comfort in that "case was no more *his act*, in the sense of the law, than

" if he had been impelled by *irresistible physical power;*
" nor is there any greater reason for exempting the com-
" pany from the risk assumed in the policy, than if his
" death had been occasioned by such means."

This case was fully argued in the Court of Appeals also, and the same train of reasoning followed, with the same results to the company, as the judgment below was *affirmed.*

Justice WILLARD, of the higher court, in construing the language, says: the rule " *nascitur a sociis*," is to be applied where there is any doubt as to the meaning of a sentence. The other members of the sentence where they are *entirely unequivocal.* The coupling of words together shows that they are to be understood in the same sense, and in the sense that are attached to the other words, only a *felonious killing of himself could have* been made. * *

Besides, in this case, the words are those of the insurer, and if susceptible of two meanings, should be taken most strongly against him. (4 Selden, 305.)

And the judge further insists upon the fact, as already stated, that if incapable of reason, the act was not that of a *suicide.*

" A death by *accident*, and a death by the *party's own*
" *hand, when deprived of reason*, stand on principle in the
" same category. In both cases, the act is done without
" a *controlling mind.* If the insurer is liable in the one
" case, he should be in the other."

If the insured was " compelled by *duress* to take his
" *own life*, it will hardly be contended that the insurer can
" avoid payment. In what consists the difference between
" THE DURESS OF MAN AND THE DURESS OF HEAVEN?
" Can a man be said to do an act prejudicial to an insurer,
" when he is compelled to do it by irresistible coercion?
" and can it make any difference whether this coercion
" came from the HAND OF MAN or the VISITATION OF
" PROVIDENCE?"

And this court lay down a rule of universal application, as respects the acts of insane persons in cases of wills and contracts. They say "if a party can do no act *to* "*bind himelf*, he certainly could do no act that would *dis*- "*charge the insurer*. If he could not make a *bond*, he "could not make a *release*. If he could not make a will, "he could not revoke one."

I respectfully make the suggestion, whether as between a death *premeditated by a suicide*, and one *involuntary*, in case insanity did not exist in a deceased person, any recovery would be ever possible under the rullng of the court below?

Let us suppose a person, *insane*, went to sea in an open boat, or attempted to swim across a wide river, which feat, in either case, it might be argued, no *sane man* would have attempted, and death followed, would not the argument be, that the attempt being one which a *sane man* could have avoided, *ergo*, the deceased was *insane*, and died by a *suicide insane*, having manifested his insanity in an act of self-destruction and exposure, which sanity could have avoided?

It would be not an incurious or unprofitable matter of reflection to pursue the train of thought to other legitimate results, which the construction in question makes entirely probable. Great names arise out of the past, such as *Blake*, *Shelley*, *and Swedenborg*, whose labors and talents are so gratefully remembered by the poets and writers of the past, and present century. Yet their lives come under our review, connected with the most painful recollections of the doubt as to their *sanity*, which was raised in the minds of contemporaries, as well as that of subsequent writers. History transmits to our own time many such names, under this peculiar clouding—that the highest of gifts exercised, and the greatest eloquence and inspiration of thought manifested have been under the control of some

great supernatural force or agency acting upon such minds.

Men so possessed appear in ordinary life, and to ordinary men, "*phenomenal! insane! unfortunate!*" To others constituting a class of mortals, the highest in rank, if their influence on human destiny is considered, such "*insane* or *eccentric*" men appear only as the favored children of genius, called as Messiahs to specially inaugurate some new epoch or era of human progress or development.

If we take Robert Fulton, with his theory of steam, as applied to navigation, before practically tested, he might have been deemed "*insane*;" yet, sane or *insane*, *he had knowledge* and *free will sufficient* to make an *an act of self-destruction criminal*, if he had been disappointed and taken his own life in consequence. But under the language of this policy, with the construction sought to be placed upon it, and that Robert Fulton had been *blown up*, in his *first trial of the steamer* he run up the Hudson, it would *be easy* to show that he was deemed *insane;* and that *being insane*, he had committed an *act of suicide*, or self-destruction, in *that condition;* and that, "*sane or insane*," it was such an act of *self-immolation* as no *reasonable man would have been likely to commit*, and hence his family could not recover on his life insurance.

By such reasoning as this, it would be idle any longer to keep up or preserve the legal distinctions which, the reason and humanity of all courts have hitherto insisted, should distinguish the acts of *sanity* from *insanity*, or between reason and madness, in all questions of responsibility as respects *human* dealing.

(7.) *The law of all the cases which involve the question of sanity, in cases of self-destruction, is decided by this Court.* (15 Wall., 590.)

The case of Terry, decided by this Court at the December Term, 1872, (15 Wallace, 590), was, for all purposes,

a conclusive decision of the rule favorable to a plaintiff's recovery, where the assured has come to his death, by his *own hand*, in an insane state.

The policy in that case contained the condition, "If the "said person, whose *life is hereby insured, shall die by his* "*own hand, the policy shall be null and void.*" And it did not attempt to restrict the death, by *one's own hand*, to any class of persons, such as *sane or insane;* nor by any description whatever. Yet the court held it not a death by the *hand of the assured*, if his act was the result of his disease.

Mr. Justice HUNT, delivering the opinion in this case, makes a full and comprehensive review of all the decided cases to be found in the English, as well as American, published Reports.

The references are to the cases of *Borodaile* v. *Hunter*, 5 Manning and Granger, 639; *Hartman* v. *Keystone Ins. Co.*, 21 Penn. St. R., 466; *Dean* v. *Mutual Life Ins. Co.*, 4 Allen, 96; *St. Louis Life Ins. Co.* v. *Graves*, 6 Bush, 268; *Cooper* v. *Massachusetts Life Ins. Co.*, 102 Mass., 227.

All these cases are passed in review by *this* Court in *that* case.

In the clear discrimination of principle governing all the cases, and the trains of reasoning to be found in a study of that case, we have found the basis of our argument for a recovery by plaintiff in this case. For, if we should even concede that a death, self-inflicted, whether a *suicide* or not, was within the terms of the policy, yet the *fact* that the death was not *intentional*, by reason of the mental *unconsciousness of the act*, would be clearly within the ruling of this Court. The great authority of this Court has settled the law for all American Courts. No amount of ingenious reasoning can confuse the distinctions so clearly made in the Terry case. And, it may be added, that high as the authority of this Court justly stands, the refusal of

the Court to hold a man bereft of reason responsible for consequences that there must exist reason to apprehend, receives support in the reason and jusice of all codes of jurisprudence, and the judgment of all civilized men.

This Court, in speaking of the act of Terry, says:

"The propositions embodied in the charge of the Court "below in that case were, in some respects, different from "each other, but in principle they were identical; they "rested upon the same basis—the *moral* and *intellectual* "*incapacity of the deceased!* In each case the *physical act* "of self-destruction was that of *George Terry!* In *neither* "*was it truly his act.* In the one supposition, he did it, "when his reasoning powers were overthrown and he had "not power or capacity to exercise them upon the act he "was about to do. It was, in effect, as if his reason and "intellect were blotted out, or had never existed. In the "other, if he appreciated the effect of his act, an uncon-"trollable act caused by insanity *compelled* its commission. "He had not the power to refrain from its commission, or "to resist the impulse. Each of the principles put forth "by the Judge rests upon the same basis—that the act was "not the *voluntary intelligent act of the deceased.*"

The cases are to be carefully distinguished from those where persons in the possession of their reasoning faculties are impelled by passion merely in the same direction.

Dr. Ray, cited by Fisher, (*Fisher on Insanity*, p. 83,) approves the charge of the Judge in Haskell's case, when he says: "The true test lies in the word power. Has the "defendant, in a criminal case, the power to distinguish "*right* from *wrong*, and the power to adhere to the *right* "and avoid the *wrong?*"

This Court says that the English judges refuse to apply to the act of the insured in causing his death the principles of legal and moral responsibility recognized in cases where the contract, the last will, or the alleged crime of such person may be in issue.

This Court, however, justly holding that such principles should be applied to cases of contract, the making of a will, or the commission of a crime, again traces out the distinction we have been following in this case, and the *primal, the important question always must be:* Was the act the intelligent voluntary act of the deceased, or was it the unconscious, unintelligent act of one *compelled by some insane impulse* to commit it?

Justice HUNT, speaking for this Court, says: "We hold "the rule on the question before us to be this: If the "assured, being in the possession of his ordinary reason- "ing faculties, from anger, pride, jealousy, or a desire to "escape from the ills of life, *intentionally takes his own life*, "the proviso attaches, and *there can be no recovery.* But "when his reasoning faculties are so impaired that he is "not able to understand the moral character, the general "nature, consequences and effect of the act he is about to "commit, or when he is impelled thereto by an *insane im-* "*pulse* which he has *not the power to resist*, such death is "not within the contemplation of the parties to the con- "tract, and the insurer is liable."

In the case at bar, according to the ruling of the Court below, we are told a recovery cannot be had, because, although the act may *have been impelled by an insane impulse, such as the deceased could not resist, the deceased took his own life*, and the conclusion is reached therefore, he died from "*suicide, sane or insane*," within the meaning of the proviso.

We have shown in this brief, as we think, that suicide by *one insane* is a *legal impossibility*, a contradiction of terms needing no construction, for none is possible that can change the meaning of the language used by the parties themselves, and that only a criminal act of self-destruction could have been contemplated.

But if it were within the power of the Court to so change the signification of the language used, and an *in-*

sane person can be held guilty of a self-murder, or *criminal act of self-destruction*, then we urge the authority of this Court, and all other decided cases, that in order to avoid a policy there must be "*a voluntary and intelligent act of self-destruction.*"

In respect to all persons of *unsound* mind, while there may be such deliberation and will, with moral and intellectual consciousness, as may consist with a free and criminal act of self-destruction, yet, we insist, that all decided cases are to the effect that the primary and important question is, whether deceased was actuated by a will, "whether it was a voluntary or conscious act, or whether "it proceeded from an *impulse* of insanity, over which de- "ceased had no control."

And it has been established in one case, that the words *sane or insane* even where the words were, "if the deceased shall die by his own hand," had no other effect, than to make the policy void, where the insured *intended self-destruction*, while in such a state of insanity, as still allowed him sufficient control over his will, so as to be capable of forming any intention with respect to the exercise of his reason or will.

It is clear, upon a review of the cases, that no civil or criminal responsibility, can be attached to the acts of insane persons, unless it appears that the mental condition of deceased, be such as to leave him in possession of his consciousness, and the *power* to control his acts, and *intend their consequences*? This raises the question so often raised as a question of fact, what degree of insanity in any particular case, was present, and what degree is it that avoids responsibility in cases of this kind ?

The latter question does not arise in this case, because the demurrer admits the fact to be true, that at the time of the shooting, *deceased was of unsound mind, and unconscious of the act.*

The questions formulated would be, 1st, was the party

competent to will? 2d. Did he destroy himself with deliberation?

(2) Because defendants do not aver or plead that deceased had in shooting himself, committed a "*suicide, sane* "*or insane*," within the meaning of the policy, and

(3) The decision of the court below precludes any showing whatever, by plaintiff, what the real mental condition of deceased was, or that the act of shooting was not one of *intention* or *self-murder*; but wholly happened from the violence incident to his affliction.

CIVIL DEATH AND PHYSICAL DEATH.

One word in concluding. Much is justly claimed on the score of beneficence to the family of persons in indigent circumstances, in behalf of the life insurance contract.

It is supposed to be a reliable provision to secure the support of such families as are alone dependent upon the labor of the head or chief, usually the father and husband of the family, in case of his death.

Is it to be *now* understood, that the *civil death*, which according to all codes of jurisprudence, ancient and modern, attends the loss of reason, is not to be accounted as a loss of faculty, a visitation of Providence as distressing in its consequences, as the physical death of the subject?

Would any person insured, if free to choose, hesitate in regard to a choice of the latter instead of the former? His family might hesitate from affection, while the object of the insurance contract, *their own support*, would be equally defeated! Is it the *meaning* of the language used in this policy, that when the moral and intellectual being, of *the man* insured, ceases to live, and he is ranked among the body of citizens, in his *municipal and moral* standing as one "*civiliter mortuis*," that he then may, as a "*Lunatic*," *destroy the only means of support provided for the support and education of a helpless wife or dependent children*, by a single impulse of his insanity? Is the company to be

discharged from liability, because the *disease* of which the assured dies, is *mental* instead of *physical*?

In the order of time, either may precede the other. Delirium is often a result of physical disease, as physical death often supervenes upon mental disaster. The claim of defendants seems to be, that it makes no difference, if only it can be established that deceased himself contributed anything to the fatal result.

If the construction of the court below, can be sustained, it will scarcely be worth while contending for a recovery, even in the case of physical death, if it can only at the same time be shown that *fever supervened*, and the death finally resulted from an injury inflicted upon himself by deceased, arising from some paroxysm of delirium?

If this be the meaning of the contract made with *this* company in *this case*, we hope we may be excused for saying it has proved an excellent contrivance, "*sane or* "*insane*, to keep the word of promise to the ear, while "deceased was living, and breaking it to the hopes of his "family when dead."

[NOTE. The "American Review of Insurance," published in New York, (May number, 1875,) contains a statement of case decided by WALLACE, in United States Circuit Court, New York, *Leberman* v. *Germania Life Ins. Co.* Policy void if insured should die by suicide. Judge held, that *insanity* would take the case out of the proviso, because in such case the law held that deceased did not kill himself within the meaning of the law. (May No., Spectator, p. 278.)]

APPENDIX.

Judge Blodgett's Opinion.

From the *Chicago Tribune*, August 7th, 1874.

Judge Blodgett remarked that there was no case except a late one in Wisconsin that could be considered as an authority in the present instance, and even in the Wisconsin case the policy was not exactly similar in its terms. It was, no doubt, within the power of a life insurance company to limit its liability to death occurring while the assured was sane, and so deny its liability in all other cases. Nice distinctions had been made as to what constituted a suicide, and new clauses in life-policies necessitated thereby. The Court thought the companies were perfectly at liberty to limit their liability to cases where the assured died while sane, and he should, therefore, although the question was not quite free from doubt, sustain the demurrer, and find for the Company. An appeal was taken.

THOS. HOYNE,

Of Counsel.

Hoyne, Horton & Hoyne.

Supreme Court of the United States.

No. 124.

SOPHIA BIGELOW, ADMINISTRATRIX, AND
HENRY C. BIGELOW, ADMINISTRATOR OF HENRY W. BIGELOW,
DECEASED, PLAINTIFFS IN ERROR,

—VS.—

THE BERKSHIRE LIFE INSURANCE COMPANY, DEFENDANT
IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF ON BEHALF OF APPELLEE.

MILLER & FROST, for Appellee.

CHICAGO:
BEACH, BARNARD & CO., LEGAL PRINTERS, 98 RANDOLPH STREET.
1876.

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IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT OF CASE.

Sophia Bigelow, as executrix, and Henry P. Bigelow, as executor, of the estate of Henry W. Bigelow, brought an action in the Circuit Court of Cook County, Illinois, for the September Term, 1873, against the Berkshire Life Insurance Company, a corporation of the State of Massachusetts, alleging that this Company, on the 22d of August, 1872, issued its policy, whereby it insured the life of the said Henry W. Bigelow in the amount of $10,000, the policy containing a proviso that if the insured, Henry W. Bigelow, should die by suicide, sane or insane, then the policy should be void, and that in such case the surrender value of the policy should be paid to the party in interest,

and that the said Bigelow died in Chicago on the 8th of February, 1873, during the continuance of the policy.

Plaintiffs aver, in the second count, that on the 22d of August, 1872, they issued another policy to the said Bigelow, of similar import, in the sum of $10,000.00.

The declaration alleges notice of death, etc., and claims damages on both policies in the sum of $25,000.00.

Defendant appeared, and caused the case to be removed into the Circuit Court of the United States for the Northern District of Illinois.

At the December Term of the Court, 1873, the defendant filed a separate plea to each of the counts of the declaration, to the effect that the policy declared on contains an express provision and reservation, that in case the said Henry W. Bigelow should die by suicide, sane or insane, that then, and in every such case, the policy should be null and void; and that in such case, the surrender value of the policy should be paid to the party in interest; and avers that the said deceased, Henry W. Bigelow, "died from the effects of a pistol wound, inflicted upon his "person by his own hand, and that the said deceased in-"tended, by inflicting such wounds, to destroy his own "life." Avers, that the surrender value of one of the policies, at the time of his death, was $457.00, and of the other, $718.00, and an offer to pay these sums to the plaintiffs before suit brought, and a continual readiness to pay them.

To these pleas, [redacted] the plaintiffs filed their replication, to the effect that the said Henry W. Bigelow, "at the time when he inflicted the pistol wound upon his "person, by his own hand, was of unsound mind, and "wholly unconscious of the act."

To this [redacted] the defendants filed a demurrer, which was, upon full argument, sustained, and the plaintiffs have brought the case to this Court.

ARGUMENT

The only question presented by this record is, whether, to a declaration upon a policy of life insurance, which contains a proviso that the policy shall be null and void, if the person whose life is insured shall die by suicide, sane or insane, a plea that such person died from the effects of a pistol wound, inflicted upon his person by his own hand, he intending, by inflicting such wound, to destroy his own life, is or is not a sufficient bar to the suit. The replication to this plea is, that the said Henry W. Bigelow, at the time when he inflicted the pistol wound upon his person, by his own hand, was of unsound mind, and wholly unconscious of the act—that is, although he intended to take his own life, and intelligently adopted the means employed to that end, yet, by reason of his mental unsoundness, he did not discern the moral quality of the act he was committing. In other words, that this act of self-destruction was not felonious.

In *Breasted* v. *The Farmer's Loan and Trust Company*, 4 Hill, 73, decided in 1843, the policy contained a proviso that in case the assured should die by his own hand, the policy should be void. The defendants pleaded that the insured committed suicide by drowning himself in the Hudson River. Plaintiff replied that when insured drowned himself, he was of unsound mind, and wholly unconscious of the act. To this replication, there was a demurrer and joinder in demurrer. The court, NELSON, Ch. J., decided, first, that the phrase, *die by his own hand*, imported death by suicide; that these are equivalent phrases when used in insurance policies. The Court treated the statement in the replication, that the insured, at the time he drowned himself, was of unsound mind, and wholly unconscious of the act, as simply an averment that he was insane, and held that the connection in which the words, "die by his own hand," stood in the policy, indicated that they were intended to express a criminal act of self-

destruction; that the criminal feature was wanting in every case where the person committing the act was, at the time, of unsound mind; that no moral quality attached to such an act; and that in that case, it would not be regarded as the act of the person who committed it, any more than of the instrument by which it was committed.

In the case of *Life Insurance Co.* v. *Terry*, 15 Wallace, 581, where the policy contained the following clause: "If "the said person whose life is hereby insured, shall die by "his own hand, this policy shall be null and void," this Court says: "If the death is caused by the voluntary act "of the assured, he knowing and intending that his death "shall be the result of his act, but when his reasoning fac- "ulties are so far impaired that he is not able to under- "stand the moral character, the general nature, conse- "quences, and effect of the act he is about to commit, and "when he is impelled thereto by an insane impulse which "he has not the power to resist, such death is not within "the contemplation of the parties to the contract, and the "insurer is liable."

The court in that case held that though the insured comprehends the physical nature of the act he was about to commit, and committed the act with the full intention of destroying his own life, yet if by reason of a diseased mind, he was unable to discern the moral quality of the act, or to resist the insane impulse that drove him to its commission, his death in this manner was not such a death as was within the contemplation of the parties when they used the phrase "shall die by his own hand"; and the court held that the parties in using the phrase, "shall die by his own hand," contemplated a self-destruction caused by the voluntary act of a moral agent, and not by his mere physical act. If the Court had been satisfied by the language used by the parties, that they intended to cover by this exempting clause, any self-destruction intentionally caused by the physical act of the deceased, they would

have given effect to that intention, for they say: "It is a "case of contract, and is to be so rendered as to give effect "to the intention of the parties;" and the court say that the expressions "commit suicide, take his own life," or die by his own hand are equivalent expressions.

Undoubtedly those charged with the management of insurance companies believe that persons who have met with successive failures in endeavoring to secure a competency, and at last finding themselves in desperate circumstances, with no prospect of improving them, do sometimes deliberately procure large insurances upon their own lives, and then terminate their existence by a deliberate act of self-destruction; that in despair they deliberately resort to this method of furnishing a provision for those who are helpless and dependent upon them. Their minds may not be in a healthful state when they enter upon this scheme, charity would compel me to say so, but that is no reason why the scheme should prove successful. But the difficulty in bringing out the facts in such cases, and in satisfying a jury that the act of self-destruction was the voluntary act of a moral agent, and not the product of a diseased mind, would naturally incline insurance companies to entirely avoid this class of risks, and assume only such risks as are within the ordinary rules of calculation. There is nothing in the policy of the law that would prevent them from doing so. It is as legitimate an act as it is for them to provide that the risk undertaken shall terminate if the assured shall enter upon a voyage, or perish upon the seas, or shall engage in any particular employment, or shall die by the hand of justice. It would, of course, be competent for the parties to so contract that the company should be exempt if the assured should die by a particular disease, or in any manner to limit the risk. The premium paid would be proportionately diminished. The simple question is whether the language employed in the proviso shows that the parties intended that the company should not be

liable if the insured should die from the effects of an intentional, not accidental, act of self-destruction, whether he was or was not, at the time, a responsible moral agent. If he was sane, he was a responsible moral agent. If he was insane, he was not a responsible moral agent. The language of the proviso is, if he shall commit suicide, that is, die by his own hand, whether he is, at the time, sane or insane, then the policy shall be void. The company could not have employed language which more distinctly excludes the idea of moral accountability from an intentional act of self-destruction than does the language here employed; and it is very difficult to argue a proposition of this kind when it is once stated. The intention would not have been more clearly expressed if the language of the proviso had been, "If the assured shall die from the effects "of an intentional act of self-destruction, though he be at "the time bereft of reason and without power to control "his will, this policy shall be null and void." This is simply an expansion of what is clearly contained in the proviso; for insanity is simply a suppression of the judgment and power to control the will.

In *Broadaile* v. *Hunter*, 5 Man. & G., 637, the language of the policy was, "or shall die by his own hand, or by "the hand of justice, or in consequence of a duel." The plea was that the assured died by his own hand, whereby the said instrument or policy of insurance became void. Replication that the said assured did not die by his own hand *in modo et forma*, upon which issue was joined. The jury found that the person whose life was insured voluntarily threw himself from a bridge with the intention of destroying his life, but that at the time of committing the act he was not capable of judging between right and wrong. Judgment for the defendant was entered on the verdict. Upon a rule to show cause, Sir T. WILD, Serg. *in arguendo*, said: "The term 'die by his own hand' is equivocal, and

"requires explanation. The insurance company might "have worded the condition thus: 'If he die by his own "'hand, whether sane or insane,' and then the meaning of "the contract would be clear." As it was, it was contended on behalf of the plaintiff that the phrase "die by his own hand" in the connection in which it stood, and being taken most strongly against the party using it, fairly imported a felonious act of self-destruction, which, of course, could only be committed by a "person who was sane," and that therefore the judgment on the verdict should be for the plaintiff; and so TINDAL, C. J., held.

In that case the counsel for the plaintiff distinctly stated that if the proviso of the policy had been in the language of the proviso of the policy in this suit, it would not have been wanting in precision or certainty, and that upon the verdict rendered the judgment must be for the defendant.

In *Price* v. *Travellers Insurance Company*, 34 Wis., 389, this precise question was decided. The words of the proviso in that policy were, "Shall die by suicide, "felonious or otherwise, sane or insane." The court say at page 393: "The intention here manifested is so plain as "to seem incapable of further explanation, and unless "there is something in the policy of the law which forbids "such stipulation, we have nothing to do but give effect "to it. For however the word 'suicide,' which is held by "the authorities to mean the same thing as 'death by his "own hand,' or 'take his own life,' might, if standing "alone, be construed to imply a felonious self-destruction, "or self-destruction by a sane man, or one capable of "understanding the nature and consequences of his own "act, and of judging between right and wrong, it is "obvious that it cannot be so received or applied here. "Such construction is forbidden by the express words of "the condition which declares that it shall make no differ-"ence whether the suicide was felonious or otherwise, or

" whether the party committing it was sane or insane at " the time. The parties have, therefore, by the very " language of the condition, defined the sense in which " they used the words, and by that definition the courts " must be bound, unless there be something in the condi- " tion contrary to public policy or sound morals, which is " not pretended."

This was a Massachusetts contract, and even if the words " sane or insane " had not been in the proviso, the insurance company, according to the settled law of that State, would not have been liable. It is fair to suppose that the parties contracted with this law in view, and it should be considered in construing the language they employed for the purpose of ascertaining their intention. Says May on Insurance, page 342 : " But whether suicide by an in- " sane man is also within the exemption, has been the " question in dispute, and upon this two prominent and " different doctrines have been maintained. On the one " hand, it is maintained that if the act be voluntarily done, " in pursuance of an intelligent purpose, and intentionally " and intelligently carried out by the proper adaptation of " means to ends, it is suicide on the part of the insured, or " death by his own hands, although insanity exist, to such " an extent that he may not be able to appreciate the " moral qualities of the act. On the other hand, it is " maintained with equal rigor, that however intelligently " the act may be done, if at the time the will be over- " powered by an uncontrollable impulse, or the party be " unable to appreciate the moral quality of the act, it is " not within the meaning of the provision."

The first view has by repeated decisions been taken by the Supreme Court of Massachusetts.

In *Dean* v. *American Mutual Life Insurance Company*, 4 Allen, 96, the policy contained a proviso that if the insured should die by his own hand, the policy should be

void. The insured cut his throat with a razor. Held, that if the assured understood the nature of the act, and intended to take his own life, this avoided the policy, though the act was committed while he was insane.

See also *Cooper* v. *Massachusetts Mutual Life Insurance Company*, 102 Mass., 227.

MILLER & FROST,

For Appellees.